SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 97

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

No. 98

MARYLAND PORT AUTHORITY, ET AL., APPELLANTS,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

No. 99

INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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[fol. 4877]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204
Import and Export Rates From and
To North Atlantic Ports

PETITION FOR SUBSTITUTION OF MASSACHUSETTS PORT AUTHORITY FOR PORT OF BOSTON COMMISSION, INTERVENER—Filed October 8, 1959

Comes Now your petitioner, Massachusetts Port Authority, and prays that it be substituted as party-intervener in the above-entitled proceedings for Port of Boston Commission, Intervener. For grounds of the substitution herein sought your petitioner says as follows:

I

Massachusetts Port Authority is a body politic and corporate created by the provisions of Chapter 465 of the Acts of 1956 of The Commonwealth of Massachusetts. Its principal office and mailing address is 14 Court Square, Boston, Massachusetts.

By virtue of the aforesaid Chapter 465 of the Acts of 1956 and Chapter 599 of the Acts of 1958, all rights and [fol. 4878] powers which were formerly rights and powers of Port of Boston Commission have been transferred to Massachusetts Port Authority.

II

Port of Boston Commission was established in 1953 as an agency of The Commonwealth of Massachusetts pursuant to the provisions of Chapter 608 of the Acts of that year. Prior to the aforementioned transfer of rights and powers to Massachusetts Port Authority, Port of Boston Commission had, pursuant to such statutory authority,

administrative charge of the Port of Boston and, among other things, had the responsibility of promoting and protecting the trade and commerce of said Port and, in connection therewith, of endeavoring to foster and support the establishment and maintenance of fair and equitable transportation rates from, to and through said Port and to prevent the establishment and maintenance of transportation rates from, to and through said Port which were unfair or inequitable, or prejudicial to said Port or injurious to its trade or commerce. Incident to said responsibility, and having been authorized to initiate, or intervene or otherwise participate in, any rate proceeding, or any other hearing or proceeding before and by this Commission, if the subject matter of such proceeding or hearing in any way or manner concerned the Port of Boston, its trade or commerce, Port of Boston Commission did, on September 13, 1956, petition for leave to intervene and to be treated as a party to the above-entitled proceedings. By [fol. 4879] its order of September 26, 1956, this Commission granted said petition and permitted Port of Boston Commission to intervene and be treated as a party to these proceedings, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard on brief and on oral argument if oral argument is heard.

Wherefore your petitioner, Massachusetts Port Authority, as lawful successor to the rights and powers of Port of Boston Commission prays leave to be substituted in these proceedings for Port of Boston Commission, Intervener.

Respectfully submitted,

Henry E. Foley, 10 Post Office Square, Boston 9, Massachusetts, Counsel for Massachusetts Port Authority.

Hans F. Loeser, George Waldstein, Foley, Hoag & Eliot, 10 Post Office Square, Boston 9, Massachusetts, Of Counsel.

October 6, 1959.

[fol. 4880] Certificate of Service (omitted in printing).

[fol. 4881]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615[1]

Equalization of Rates at North Atlantic Ports

Decided .....

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1. Schedules of proposed reduced class and commodity rates on export and import traffic between interior points in differential territory and New York and Albany, N. Y., Boston, Mass., and Portland, Maine, and their relation to the present rates on like traffic to and from Baltimore, Md., Philadelphia, Pa., and Norfolk and Newport News, Va., found not shown to be just and reasonable, and to result in undue preference and advantage of the ports first named.

2. Schedules of proposed reduced rates on like traffic between the same interior points and the ports last named found not shown to be just and reasonable.

3. Schedules ordered cancelled and fourth-section application denied.

J. H. Colgren, R. E. Costello, J. F. Reilly, R. G. Bleakney, Jr., M. R. Warnock, J. T. Clark, B. Hulkhower, W. Q. Keenan, N. J. Holland, J. W. Grady, and S. W. Scully, for respondents.

S. Goldstein, F. A. Mulhern, E. K. Laux, A. L. Winn, Jr., S. H. Moerman, J. S. Payne, W. J. Myskowski, C. H. Tenney, S. Mandell, S. Brandes, L. J. Lefkowitz, P. Blair, D. F. Tynan, A. C. Welsh, C. W. Merritt, P. C. Brown, J. J. Thornton, J. F. Toppeta, H. E. Foley, G. Woldstein,

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[1] This report embraces also Fourth-Section Application No. 32204, Import and Export Rates from and to North Atlantic ports.

G. E. Pratt, D. E. Pinsky, R. G. Curry, F. M. Dolan, M. D. Miller, J. H. Macomber, Jr., F. W. Denniston, A. G. Brand, L. B. Hillsinger, L. M. Shinn, J. L. Pease, J. S. Chartrand, and W. B. Grimes, in support of respondents.

J. Langdon, Jr., R. R. Bongartz, C. J. Henry, Jr., J. S. Shannon, R. B. Claytor, J. W. Hanifin, H. Biaett, M. A. Meyer, Jr., W. J. Taylor, A. W. Hesse, Jr., R. J. Gunning, J. H. Lewin and W. P. Quinn for protestant railroads.

D. Macleay, W. Price, Jr., M. Duane, B. A. Wallace, H. L. Walker, P. G. Kraemer, C. R. Seal, H. E. Ketner, C. McD. Gillan, W. L. Marbury, J. M. Jones, Jr. and H. E. Mesirow for other protestants.

W. H. Wagner for an interested shipper.

[fol. 4882]

REPORT PROPOSED BY MARION L. BOAT, HEARING EXAMINER—
Served October 9, 1959

By schedules filed to become effective July 10, 1956, and later dates, railroads which serve the ports of New York and Albany, N. Y., Boston, Mass., also Portland, Maine, (except as hereinafter indicated) and connecting railroads, herein referred to as respondents, proposed to reduce the rates[2] on export and import traffic except iron ore, coal, and coke which is the direct product of coal between those ports, herein referred to as the northern tier ports, and points in the interior, in an area generally west of the Buffalo, N.Y.-Pittsburgh, Pa., line, and extending to the Mississippi River. The purpose of the proposal is to equalize the rates, on the Baltimore basis of rates, on such traffic to and from those ports with the rates on like traffic to and from the ports of Philadelphia, Pa., Baltimore, Md., and the Hampton Roads ports in Virginia, herein called the southern tier ports, and thus abolish the so-called port differentials which have obtained in connection with these rates for many years.

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[2] Rates and differences in rates are stated in cents per 100 pounds, except as otherwise indicated.

By schedules effective simultaneously with those of the respondents, certain railroads which serve the southern tier ports, some of which also serve New York, herein referred to as protestants propose to reduce the rates between the southern tier ports and the same interior territory, except as hereinafter described, by the same amounts, and to reduce their rates to and from New York by the same amounts as proposed by their competitors, the respondents. This counter proposal, in the event that respondents' [fol. 4883] proposed rates were found lawful, would restore the present differentials, thus maintaining the long-standing port relationships, but upon a slightly lower level of rates.

Upon protests of certain of each group of railroads, the one opposing and the other favoring equalization of the ports, and the several port interests and other parties supporting their respective positions, by order of July 6, 1956, the operation of the proposed schedules was suspended until February 9, 1957. Subsequently the proponents of the schedules have voluntarily deferred their operation until the disposition of this proceeding. Certain but not all connecting railroads which participate in the rates to both the northern and southern tier ports, in order to remain competitive, joined in the respective suspended schedules.

The territory to and from which equalization of the northern tier ports with Baltimore is initially proposed is roughly that represented by Central Freight Association territory including Illinois Freight Association territory, and southern Wisconsin, hereinafter called the affected or differential territory. It includes territory on and west of a line extending from a point just west of Buffalo, N. Y., through Warren, Oil City, Butler, Pittsburgh and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof. Also included are points on the lines of the Chesapeake & Ohio in Kentucky, from Ashland southward to Elkhorn City, in- [fol. 4884] cluding branches, and from Ashland to Lexing-

ton, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio.

Some of the western railroads serving points in northern Illinois, Mississippi River cities and Wisconsin did not join in the proposed equalization. Thus, if respondents' proposal became effective, it would cause an increase in the present rate spreads from such points as Davenport, Iowa, and Madison, Wis., over Chicago, Ill., mentioned later herein.

Equalization is proposed only in connection with import and export rates published as such. Eventually it is intended to effect equalization as to all territory to and from which the recognized port differentials have been maintained and as to all export and import traffic, irrespective of the type of rate on which it moves. Protestants are apprehensive of the widespread collateral effects of the equalization of rates on such traffic, including traffic moving on combination rates, also the rates on coastwise and intercoastal traffic and the domestic rates to and from the ports. There are numerous unrestricted domestic commodity rates to the north Atlantic ports which reflect the port differentials, under which there is a substantial movement of export-import traffic.

Differential rates on export-import traffic between the Hampton Roads ports and the interior apply only from and to the portion of differential territory which lies west of the line of the Baltimore & Ohio through Sandusky, Mans- [fol. 4885] field, Newark, Zanesville, and Marietta, Ohio, thence the Ohio River to Kenova, W. Va., and includes points on the Chesapeake and Ohio and the New York Central system lines in the portion of West Virginia which lies in central territory.

The recognized differences in the present rail rates on import and export traffic, commonly known as the port differentials, including those at Canadian north Atlantic ports are shown below.

Import Traffic

Port	Differentials, in cents per 100 lbs. Classes 1	2	3	4	5	6
Canadian Ports (Same as Baltimore)						
Portland, Maine (Baltimore rates via Canadian routes, New York rates via standard routes)						
Boston, Mass. (Same as New York, N. Y.)						
Albany, N. Y. (Philadelphia rates, subject to domestic rates as maxima)						
Philadelphia under New York	6	6	2	2	2	2
Baltimore under New York	8	8	3	3	3	3
Hampton Roads (1) (Same as Baltimore, Md.)						

(1) To territory west of Sandusky, Mansfield, Zanesville, Marietta line.

[fol. 4886]

Canadian Ports Halifax, St. John, etc. (Same as New York) Montreal (Same as Philadelphia)						
Portland Boston (Same as New York)						
Albany (Same as Philadelphia, subject to domestic rates as maxima)						
Philadelphia under New York	2	2	2	2	2	2
Grain, ½¢ under New York						
Flour, 1¢ under New York						

IMPORT TRAFFIC

Port	Differentials in cents per 100 lbs. Classes 1	2	3	4	5	6
Baltimore under New York	3	3	3	3	3	3
Grain, 1½¢ under New York						
Flour, 2¢ under New York						
Hampton Roads (2)						
(Same as Baltimore)						

(2) From territory west of Sandusky, Mansfield, Zanesville, Marietta, Ohio Line.

On commodity rates, other than on export grain and flour, the same differentials are generally maintained as on class rates.[3] Thus, it will be observed that except as to the export rates on grain and flour and as to imports moving on first-class or second-class rates, the present recognized differential is 3 cents, Baltimore and Hampton Roads under New York.

In applying the general increases in rates, usually in percentage form, authorized by the Commission since [fol. 4887] World War II, the railroads were admonished to restore these differentials. This was done quite promptly on grain and a few other commodities. But there were extended periods, as much as 3 to 5 years, when because of extenuating circumstances, rate relationships generally more favorable to the southern tier ports than those reflected by the normal differentials prevailed, thus disturbing the channels of trade. The differentials, normally 3 cents were in numerous instances, as much as 5 cents. Prompt restoration of the differentials was required in *Increased Freight Rates, Eastern, Western and Southern Territories,* 1956, 300 I.C.C. 633, 682-684.

Typical present rates (exclusive of increases authorized in Ex Parte 212,) are as follows: On imports, carloads, from New York, 152 cents on bananas to Detroit, Mich.,

[3] The rates on import iron ore from Baltimore and Philadelphia to the Pittsburgh area have been on a parity for over 50 years. See *Iron Ore From Eastern Ports to C.F.A. Points,* 291 I.C.C. 527, 536.

169 cents on machinery, n.o.i.b.n. to St. Louis, Mo.; 91 cents on crude rubber to Akron, Ohio; 48 cents on ball or china clay to Erie, Pa., 671 cents per ton of 2,240 pounds on chrome ore to Marietta, Ohio. On exports, carloads, to New York, 269 cents on automobiles, from Flint, Mich., 114 cents on glass containers from East St. Louis, Ill.; 34 cents (proportional), on wheat from Chicago, Ill.; 48 cents on manufactured iron and steel articles from Pittsburgh, Pa.; 112 cents on packinghouse products from Chicago, Ill.; and 96 cents on tractors from Peoria, Ill. Except on grain, corresponding Baltimore rates are 3 cents, (60 cents as to per ton rates) lower than those shown.

When the present differentials were established there were higher ocean rates to and from Baltimore and Phila- [fol. 4888] delphia than to and from the northern tier ports. The differentials were designed and their effect was to compensate for the differences in these ocean rates in favor of the northern tier points. Thus they tended to produce equal total transportation charges between an interior point and the foreign origin or destination over all routes through the several ports, affording the different railroads and ports competitive rates. Beginning in the early twenties and extending to about 1935, the ocean rates to and from the different ports were equalized. As a result, the respondents and those supporting them here contend, the northern tier ports cannot effectively compete for the traffic and their share of it has become actually and relatively less while the southern tier ports have increased their share of the total foreign trade through the north Atlantic ports. The evidence relied upon to support these claims is hereinafter discussed.

With the equalization of the ocean rates to and from the north Atlantic ports the through rail-ocean transportation charges through the northern tier ports, which respondents serve, became higher than corresponding rates through the southern tier ports served by protestants, by the amounts of the above differentials. The respondents' proposal to abolish those differentials, if made effective, would generally provide an equality of aggregate transportation charges, rail and ocean, between foreign countries

and points in the affected territory for the whole range of north Atlantic ports, including Albany. As respondents do not serve Philadelphia, their proposal to equalize the [fol. 4889] northern tier ports with Baltimore, if found lawful, presumably would require that the Philadelphia rates also be reduced to the Baltimore basis.

In addition to the respondents, those presenting evidence in support of the proposed equalization include the City of New York, the State of New York, the Port of New York Authority, herein called the Authority, the Port of Boston Commission, The Greater Boston Chamber of Commerce, The Chamber of Commerce of the State of New York, The Brooklyn Chamber of Commerce, the Albany Port District Commission, the United States Department of Agriculture, General Services Administration, the Board of Trade of the City of Chicago, and numerous trade and traffic associations in the New York and the northern New Jersey port area.

The protestant railroads which urge continuation of the differentials are supported by the Maryland Port Authority, the Virginia State Ports Authority, the Delaware River Port Authority, the City of Philadelphia, the Baltimore Association of Commerce, and the Chamber of Commerce of Greater Philadelphia.

The present differentials, except for brief periods of disagreement between the carriers during the 80's, have been in effect since 1877[4] as the result of an agreement entered into by four north Atlantic port railroads, which had two objectives: To avoid misunderstanding as to the geographical advantages or disadvantages of New York, Philadelphia and Baltimore as affected by railroad-ocean transportation, and to effect an equalization of rail-ocean transportation cost between interior points and foreign [fol. 4890] ports reached through those cities. It also provided that rates to Boston should be not less than to New York. In 1882, the differentials agreed upon were the

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[4] So-called "split" differentials, one-half the standard differentials were established on grain in 1899. See *In the Matter of Differential Rates*, 11 I.C.C. 13, 20.

subject of an investigation made at the request of the principal terminal railroads serving those ports, conducted by the Thurman-Cooley-Washburn Advisory Commission. It concerned the differentials on domestic as well as foreign traffic. In its report therein, the so-called Cooley award, that Commission concluded that the then existing differentials should not be disturbed. The respondents introduced that report in evidence and direct particular attention to the following paragraph thereof:

> "But we do not assume that the rates which are just today will be just indefinitely. They have become established by the force of circumstances and they ought to give way if future circumstances shall be such as to render it right and proper. They constitute a temporary arrangement only; equitable as we think for the present, but which may become inequitable before the lapse of any considerable time. Whenever they shall be found to operate unfairly and to give a force or unnatural direction to trade and whenever it shall appear that they tend to deprive any of the seaports affected by them of the proportion of business that would naturally come to it under the operation of normal competition, the want of equity in the rates will appear and it will be right to modify or perhaps abolish them."

Of the three principles referred to in that report, which were suggested as controlling by the different parties, the distance principle, the cost principle, and the "competitive principle, the latter was found to be the true one and was qualified only to the extent that it should operate in an atmosphere of controlled rate stability rather than of un- [fol. 4891] inhibited rate cutting and competitive strife, the objective being the preservation and promotion of the prosperity of the several ports, not only from the standpoint of their local interests but in the interest and welfare of the people of the nation as a whole. This principle of "competitive opportunity" stated by Albert Fink, Commissioner of the trunk lines, to whom the subject of differential rates had been referred, in his report of December

1, 1881,[5] appears to have been the general principle for testing the soundness of the differentials from their inception. Thus the advisory Commission concluded that the differential rates reflected and were subordinate to that principle, by the operation of which they had come into existence, and that under the circumstances then existing, should not be disturbed. However, it added the paragraph above quoted which the respondents, as already indicated, deem significant in its bearing upon the instant controversy.

A detailed history of the differential adjustment is contained in appendix B of the Commission's report in *Maritime Asso., Boston Chamber of Commerce,* v. *A. A. R. Co.,* 95 I.C.C. 539, 583. As early as 1905 and in a number of proceedings both prior and subsequent to the equalization of the ocean rates, the Commission has considered the lawfulness of the rates in that adjustment, when assailed by one or more of the port interests, but has consistently upheld them as lawful. See *Lighterage Cases,* 203 I.C.C. 481, 504. This is the first instance in which any port railroads have proposed to alter the adjustment.

[fol. 4892] In *Albany Port District Commission* v. *Ahnapee & W. Ry. Co.,* 219 I.C.C. 151, (1936) in which the port of Albany assailed the domestic rates, which then applied on its port traffic, as unreasonable and unduly prejudicial to it and unduly preferential of other north Atlantic ports, the Commission in its decision, made in the light of the 1935 amendment bringing ports and port districts within the scope of section 3 of the act, prescribed reasonable rates on all port traffic between central territory and Albany on the Philadelphia basis and required that the undue prejudice to Albany and preference of the other ports therein found should be removed by establishing rates which reflected such relationship. In *Export Grain from Buffalo to New York,* 278 I.C.C. 31, 292 I.C.C. 647, the Commission found lawful reduced rates proposed by the railroads on ex-lake grain for export from Buffalo, N. Y., to the northern tier ports, and which were on a parity with those to Baltimore. That adjustment is unrelated to the adjustment here in issue. In a recent proceeding it found lawful import

[5] See Daish, "Atlantic Port Differentials", p. 9.

rates on iron ore from Philadelphia to certain destinations in the affected territory the same as those from Baltimore. *Iron Ore from Eastern Ports to C.F.A. Points,* 291 I.C.C. 527, 299 I.C.C. 195, (this proceeding was reopened and is pending.) The rates on import iron ore are not embraced in this proceeding.

The principal respondents are the New York Central which serves New York, Boston, and Albany; the Erie, the Lackawanna, and the Lehigh Valley, which serve New York exclusively; the New Haven, serving New York and Boston; [fol. 4893] and the Boston and Maine which also serves Boston. The principal protestants are the Baltimore and Ohio and Pennsylvania which serves Baltimore, Philadelphia, and New York; the Reading Company serving Philadelphia; and the Western Maryland, which also serves Baltimore. The protestants which serve Hampton Roads are the Pennsylvania, the Norfolk and Western, the Chesapeake and Ohio, and the Virginian.

The Maine Central, which serves Portland, occupies a unique position. It reluctantly joined in the reduced export rates to that port on the Baltimore basis to avoid having the highest rates to any United States Atlantic port, if respondents' proposal becomes effective. Import rates on certain commodities from Portland to the affected territory are on the Baltimore basis and are published by the Canadian railroads, including the Grand Trunk Railway System, whose lines extend from Portland through Canada to the affected territory. The Maine Central participates in those rates which are on the Baltimore level, differentially lower than the present rates from New York and Boston. It opposes the respondents' proposed import rates which would eliminate such differential.

Respondents contrast the present inequality in rail rates to and from the north Atlantic ports with adjustments of export and import rates to and from the south Atlantic and Gulf port ranges. The south Atlantic ports from Morehead City, N. C. to Jacksonville, Fla., and the Gulf ports are grouped as to import-export rates from and to central [fol. 4894] territory west of the lines of the Monon Railroad extending from Michigan City to Indianapolis, Ind., and of the New York Central thence to Cincinnati, Ohio. Such

equalization also obtains from a large portion of western trunkline territory. Similarly the Gulf ports from Pensacola, Fla., to Corpus Christi, Tex., are equalized on both export and import traffic from and to portions of Illinois, Iowa, Missouri and eastern Kansas. Between these south Atlantic and Gulf ports and certain points in the affected territory served by the eastern railroads including the New York Central, the Pennsylvania and Baltimore & Ohio, the rates are generally lower than those to and from New York. Since 1947 those railroads, in order to be in a position to compete with other lines for this traffic, have participated in such rates which are either on the Baltimore basis or lower.

The respondents's position is that as they are faced with diminishing traffic and the differences in the ocean rates to and from the North Atlantic ports have long since disappeared, the principle of the right to compete which permitted establishment of the equalized rates to and from the south Atlantic and Gulf port ranges should be applied to the north Atlantic range.

Other factors threatening to affect their competitive position and which motivated the respondents in their decision to equalize the north Atlantic port rates were (1) the imminent completion of the St. Lawrence Seaway, recently opened to deep draft vessels, with its potential attraction for grain and other traffic, which they consider makes it all the [fol. 4895] more imperative that their rail rates be the same as those of the southern tier port lines in their competition for the remaining traffic and the generation of new tonnage to replace that diverted, and (2) the depletion of iron ore reserves in the upper Great Lakes region, adversely affecting the New York Central ex-lake ore traffic to the Youngstown, Ohio, and Pittsburgh areas.

Another consideration urged by respondents is that the railroads serving the ports of Philadelphia, Baltimore, and Hampton Roads move large tonnages of export and tidewater coal to those ports which, in recent years, have increased substantially and promise to continue; that due to the geographical origin of this coal it is doubtful if any or little of it would be available to the ports of New York and Boston but that such traffic affords a backbone of revenue producing tonnage to the southern tier port rail-

roads which is important to their successful operation and prosperity, with the consequence that the conditions are now the reverse of those which induced establishment of the differentials predicated on the concept of aiding weak or handicapped ports. Respondents also argue that the heavy importation of iron ore provides an important revenue contribution, especially to the Baltimore and Philadelphia roads. Their evidence, however, indicates wide fluctuations from year to year in coal tonnage. In five of the years in the postwar decade the volume handled through Hampton Roads was less than half that in 1955, dropping from 20 million tons in 1947 to 2 million tons in 1950. Proportionately greater fluctuations occur at Baltimore. Its volume [fol. 4896] of 11.4 million tons in 1947, the peak year, declined to 0.3 million in 1950, rose to 4 million tons in 1951, and dropped to 0.6 million in 1954. Imports of iron ore through Baltimore and Philadelphia in the same decade were more stable, the volume expanding quite consistently. However, the proportion of this which is utilized in those port areas and the extent to which the remainder contributes to railroad revenues is not disclosed. The rates on such ore to the affected territory are the subject of other pending proceedings.

The respondents contend that a change in conditions has occured in the transportation of foreign commerce through the north Atlantic ports since the differentials were established; that following equalization of the ocean rates, completed in 1935, the higher northern tier port rates had the effect of diverting a large share of the traffic to and from affected territory through the ports south of New York; and the full effect of this diversion was not immediately felt, but the peacetime shipping following World War II disclosed the impact of the change in ocean rates, as a result of which a preference of the southern tier ports now exists. In this connection they quote from *New York Produce Exchange* v. *Baltimore & O. R. Co.*, 7 I.C.C. 612 (1898), in which the Commission found that disturbance of the differentials, which had been observed for over 20 years, was not justified but said at page 620, "Manifestly, however, the conditions which determine the fairness of a differential are continually varying," and "actual observation of the effect of

[fol. 4897] these preferences is the best if not the only means of determining their fairness * * * ." (p. 669). They also cite *Chamber of Commerce of N. Y.* v. *N.Y.C. & H.R. R.R. Co.*, 24 I.C.C. 55, 57, where the Commission said with reference to the north Atlantic port adjustment "We are not to be understood as holding that the present rate adjustment will for all time or for any particular period of time be just and reasonable, * * * ". Respondents accept the view expressed by the Thurman Commission in 1882 and reiterated in the report first cited that the most satisfactory test of these differentials is the result of their operation. As they put it "the crucial test for Commission consideration is the proven traffic diversion, which continues today".

The position of the Authority, in which the State of New York and the City of New York join, is that the decline in foreign tonnage through the port in recent years indicates that the proposed reduced rates are necessary to enable respondents to compete on more nearly equal terms with the railroads serving the southern tier ports, and, that with an equality of ocean rates there is no competitive necessity for a rail rate differential against New York.

The position of the protestants which serve Baltimore and Philadelphia is that respondents have not sustained their burden of showing that the suspended rates between New York, Boston, and Albany and the affected territory would be lawful; that those rates from and to New York would not be compensatory; that they have no competitive justification; and that the southern tier ports would be seri-
[fol. 4898] ously injured if the present differentials were abolished. It is also their position that there is no justification for rates to and from Boston lower than to and from New York.

The protestants which serve the Hampton Roads ports (except the Pennsylvania) contend that no competitive need has been shown for the respondents' proposed reduced rates and that they have not been shown to be just, reasonable, consistent with the national transportation policy, or otherwise lawful. Their evidence is directed almost entirely to that proposal as it relates to New York. That port, they say, is "the real competition faced by Hampton Roads."

With respect to their suspended schedules, which are in the nature of a counter proposal, all of the protestants are in agreement that this proceeding presents a basic issue of rate relationship—the port of New York versus the southern tier ports. Accordingly they request that this issue be decided on the present rate level. This will avoid needless sacrifice of carrier revenue. As it is clear that the sole issue is one of lawful rate relationships, determination of that issue should be made independently of the counter proposal. In view of the conclusions reached and the findings herein recommended it is unnecessary to consider the evidence presented in support of these schedules. See *Export Grain from Buffalo to New York,* on further hearing, *supra,* at page 658.

The United States is generally thought to be an exporter of manufactured goods. But, excluding goods exported to [fol. 4899] Canada and Mexico which comprise about 30 percent of all the foreign trade of the United States, the movement of United States manufactures to foreign markets is continually declining. The principal movement of both exports and imports is raw materials and to a lesser extent, semifinished goods.

Ocean-borne commerce is classified into two types of cargo. By far the largest in volume is bulk cargo. It consists generally of low value, heavy volume, raw materials which are handled at the port by mechanical facilities and provide bottom loading for ships or may move as full cargoes. The other type, called general cargo, includes principally manufactured and semimanufactured goods, which are usually packaged, but also other commodities which are not. It generally constitutes the more profitable "top loading" for ships in a balanced cargo operation.

The type of traffic determines the character and to a great extent the cost of the port terminal service which the port railroads perform in delivering it to or receiving it from the ship, although the facilities employed may vary widely depending upon the physical characteristics of the harbor used. Another important distinguishing characteristic lies in the relative commercial and economic benefits which a port derives from these different types. General cargo, which requires the performance of various and

numerous services, including handling and stevedore service, provides greater employment and produces a far greater revenue per ton for the port community through [fol. 4900] which it moves than does bulk cargo, which is mostly handled by specialized mechanical facilities such as those used in unloading grain and coal, or by private facilities. However, both types of cargo, are considered essential to a healthy port economy.

North Atlantic Port Foreign Commerce.—The principal exports of the United States are grain, cotton, other raw materials such as coal and phosphate, and semimanufactures. The large volume imports are chiefly crude materials, such as petroleum and ores.

Foreign trade through United States coastal ports in 1955, expressed in net tons, consisted of 144 million tons of imports and 96 million tons of exports, a total of 240 million tons. This compared with a total of 83 million tons in 1923 and 124 million tons in 1946. In 1955 the north Atlantic ports share was 102 million tons or about 71 percent of the imports, and 54 million tons or about 56 percent of the exports. These compared with their share of 61 percent of the imports and 48 percent of the ocean-borne exports in 1923.

The principal bulk cargo which moves through these ports includes petroleum, ores, grain and coal. The general cargo consists of other commodities and includes manufactures and semimanufactures of relatively high value, which comprise important traffic herein considered.

North Atlantic Bulk Cargoes.—Petroleum imports through the north Atlantic ports rose from 5.5 million tons [fol. 4901] in 1923 to 65 million tons in 1955. A large preponderance of the increase was through the ports of New York and Philadelphia, with Portland, Boston, Baltimore, and Hampton Roads sharing also. Most of this traffic consists of crude petroleum which is refined near the ports and residual fuel oil consumed on or near the seaboard, which seldom, if ever, moves by rail. Little or none of it moves to differential territory.

Importation of iron ore through the north Atlantic ports aggregated 16.8 million tons in 1955. This ore enters for

the most part through Baltimore and Philadelphia, with a relatively small volume through Hampton Roads and Boston and a negligible amount through New York. It moves to some extent in full cargoes in chartered or private vessels. The rates thereon are not in issue herein.

Other imports of ores and concentrates, rates on which are embraced herein, move in much smaller volume than iron ore. They consist chiefly of chrome, copper, aluminum, and manganese. Since 1946, particularly, they have moved in substantial and increasing volume, generally in bulk, but some in drums or barrels. These ores, of which 3.1 million tons were moved through north Atlantic ports in 1955, enter mostly through Baltimore, Philadelphia, and New York, with much smaller but increasing volumes through Hampton Roads.

Coal, also not involved herein, with 34 million tons in 1955, is by far the chief commodity exported through the north Atlantic ports as a group. It generally moves in full [fol. 4902] cargo lots in tramp or chartered vessels. The great preponderance moves through Hampton Roads, the tonnage handled at that port increasing from 2.7 million tons in 1923 to 29.4 million tons in 1955, while that through Baltimore increased from 1.4 million tons to 3.7 million tons. During that period the volume through New York and Philadelphia was substantial only in 1945-1949 and in 1950 and 1951, but even in those years their aggregate volume was less than that at Baltimore. Thus the increase in coal exports through the north Atlantic ports was most notable at Hampton Roads. The tonnage through the northern tier ports is negligible.

From the standpoint of volume, grain is the second most important commodity exported through these ports, increasing from 4.2 million tons in 1923 to 5.4 million tons in 1955. It is the chief export commodity and by far the most important bulk commodity, of the tonnage which moves to and from affected territory, herein considered. From 1923 to 1955 there were large increases in the tonnage to Baltimore and Hampton Roads, a lesser increase to Albany, and a decrease in the volumes through New York, Philadelphia, and Portland. The net result was an increase from 58 to 73 percent of the North Atlantic port total for the southern tier

ports, and a drop from 42 to 27 percent at the northern tier ports. Grain requires special or exclusive port terminal facilities and moves largely in full cargo lots. The 1955 movement was distributed as follows: Baltimore 2.3 million tons, Hampton Roads 1 million, Albany .8 million, Phila- [fol. 4903] delphia .7 million, New York .4 million, with Boston and Portland dividing .2 million tons.

General participation of North Atlantic ports in foreign commerce.—A considerable portion of the tonnage data relied upon by the respondents and those supporting them relates to the trends of the several north Atlantic ports' participation in all ocean-borne foreign commerce of the United States, as distinguished from that to or from affected territory. These data show the volume of such commerce, regardless of how it may have moved to or from the ports, through the North Atlantic ports since 1923. It is not limited to rail tonnage nor to the specific interior area with which this case is concerned. Such evidence, and especially the relationships and conclusions drawn therefrom, has value of varying, but generally only slight, degree as background material. It has little or no significance as an indication of the trends the ports have experienced with regard to the particular rail traffic to and from the affected territory to which the suspended schedules relate, a topic discussed at a later point.

The total of ocean-borne exports and imports combined through New York rose from 22.6 million long tons in 1923 to 36.2 million tons in 1956, but that port's share of total United States ocean-borne exports and imports declined from 28.6 percent to 14 percent during this period. As its share in 1946 was 23.7 percent the greater part of the decline occurred in the period following World War II.[6] [fol. 4904] For Boston the situation as to all ocean-borne traffic is somewhat similar. Its imports increased from 2.4 million long tons in 1946 to 5.5 million tons in 1956, a gain proportionately greater than for New York in the corresponding period. During the same years its exports in-

[6] These data and those in Appendix D were reported by Bureau of the Census, U.S. Department of Commerce. Those shown in Appendix A are from "Waterborne Commerce of The United States" U.S. Army Corps of Engineers.

creased from 395,000 tons to 952,000 tons, while New York's declined from 12 million tons to 8.7 million tons. The percentage of total United States foreign tonnage moving through Boston dropped only slightly during that decade from 2.6 to 2.5 percent. However, while the trend of Boston's total volume of exports and imports has been upward since 1923 its percentage share has trended downward, declining from 4.7 percent in 1923 to 2.5 percent in 1956, a drop proportionately slightly less than for New York.[6]

The share of the southern tier ports in total United States imports and exports increased from 1923 to 1956 as follows: Philadelphia from 7.9 to 15.7 percent; Baltimore from 8.4 to 10.4 percent; and Hampton Roads from 4.3 to 17.1 percent as shown above. Increases in bulk cargo accounted for most of the increased tonnage.

Tonnage data showing the total of exports and imports through New York as compared with the total for the United States in the years 1923, and 1946 to 1956 inclusive, are set forth in appendix D. The extent of New York's participation in exports and imports of general cargo is also shown.

Except for its 19.1 million long tons of tanker cargo imports in 1956, an increase from 2.4 million tons in 1923, [fol. 4905] the principal foreign trade of New York in 1956 was general cargo. In this connection the port compares the increases in its share in this type of cargo, 1956 over 1955, of 0.1 percent in exports and 1.9 percent in imports with much larger increases, ranging up to 37 percent for exports and 29 percent for imports at the principal Gulf and South Atlantic ports and the Pacific coast ports as a group.

New York's position in United States foreign trade.—While New York emphasizes the drastic decline in its percentage of the total United States import and export tonnage, particularly since World War II, its increasingly less favorable relative position during this period stems largely from its failure to participate in the large increase in the export movement of coal, its generally smaller share of export grain, and its inability to share proportionately in the burgeoning imports of petroleum and ores, especially iron ore.

From 1946 to 1955, as to export coal and grain, New York like all the other north Atlantic ports, save Hampton Roads and Albany whose grain exports rose substantially, suffered a decline in the aggregate exports of these commodities. Through Hampton Roads their movement increased from 4.9 million tons in 1946 to 30.7 million tons in 1955 compared with an increase from 45.5 million to 65.5 million tons from all of the United States. About 95 percent of the increase in total export volume at Hampton Roads in this period was of coal traffic.

As to United States imports of petroleum and ores, aggregating 23.7 million tons in 1946 and 119 million tons [fol. 4906] in 1955, the increase was about 95 million tons, two-thirds of which, or about 63 million tons, occurred at north Atlantic ports. This increase was divided as follows: New York 14 million, Portland 8 million, and Boston 2 million tons, a total of 24 million tons, as compared with an increase of 39 million tons at southern tier ports, divided as follows: Philadelphia 26 million tons, Baltimore 10.5 million tons, and Hampton Roads 2.5 million tons. During this decade New York's imports of these two commodity groups increased 181 percent as compared with 400 percent for the United States and 247 percent for all North Atlantic ports.

Summarizing, the exceptionally heavy exports of coal through Hampton Roads and the large increases in imports of petroleum and ores, in absolute volume, and especially percentagewise, through Philadelphia and Baltimore, largely explain the loss of relative position which New York has experienced in United States ocean-borne foreign commerce. As shown in appendix A, if the tonnages of those bulk commodities and also that of export grain are excluded from the total tonnage of imports and exports through the North Atlantic ports, New York increased its percentage of the movement through those ports from 53.7 percent in 1955 to 56.9 percent in 1955.

Also contributing to the decline in New York's relative position as to total United States exports and imports has been the rapid growth since World War II of the South Atlantic Gulf, and Pacific ports' trade, due in great mea- [fol. 4907] sure to the expanding population and industrial development in the areas tributary to such ports. Their

relative importance in the handling of general cargo in 1956, as compared with New York and other North Atlantic ports, is shown in appendix B.

Considering New York's situation in the competition for all North Atlantic foreign trade the following table shows in column (1) the total of exports and imports for 1955:

	(1) (tons) Total	(2) (tons) Imports	(3) (tons) Exports
New York	38,897,567	9,442,033	8,612,347
Philadelphia	37,136,849	2,965,677	2,619,374
Baltimore	25,733,775	4,370,151	4,640,435
Hampton Roads	35,888,849	1,713,203	2,031,777

If import petroleum and iron ore and export coal are eliminated, for the reasons among others that they do not move to or from the affected territory, or rates thereon are not in issue in this proceeding, the tonnages are as shown in columns (2) and (3). As those in column (3) include grain and those in column (2) bulk ores, other than iron ore, they do not indicate the relative value to the several port communities of the tonnages. The following table shows the tonnages, excluding these commodities and also those previously named. Accordingly it is representative of general cargo.

	Imports (tons)	Exports (tons)	Total (tons)
New York	8.434,065	8,178,436	16,612,501
Philadelphia	2,651,018	1,804,956	4,455,974
Baltimore	1,648,071	2,147,798	3,795,869
Hampton Roads	1,142,812	794,288	1,937,100

These tables show that New York handled (a) more tonnage of all commodities than any of the southern tier ports; [fol. 4908] (b) excluding petroleum, coal, and iron ore, nearly as much as those ports combined; and (c) about 60 percent more general cargo exports and imports than those ports combined.

The foregoing comparative data relate to traffic flow through the ports regardless of its domestic origin or destination, or the mode of inland transportation when the goods moved to or from an inland point other than the

port of entry or port of export. A July 1957 issue of a Port of New York Authority publication states that trucks pick up and deliver over 50 percent of the export and import general cargo at the port of New York's piers. Reference is made therein to an instance of 35 trailer-loads of machinery moving from a single pier in one day. There is no indication of any bulk cargo moving to or from any of the ports by truck. But such cargo moving between affected territory and New York has available to it inland barge service via the New York State barge canal.

[fol. 4909] *Alleged loss of competitive position since 1945.* —Respondents claim that the northern tier ports have suffered a loss in relative position with respect to north Atlantic port tonnage beginning in 1946. In analyzing this claim all export tonnage, exclusive of coal and grain, and all import tonnage, exclusive of petroleum and iron ores, will be considered. The results, with those for New York stated separately, are shown in appendix C.

In 1955, of the north Atlantic port exports, the share of the four northern tier ports, excluding coal and grain, was 62 percent, the same as it was in 1945, and slightly higher than it was in 1946, the year when respondents claim their relative position began to deteriorate. The volume of exports through Boston of 435,118 tons in 1955 was the largest for any year shown except 1943, a war year, and was more than double that of 1946. As the table shows the southern tier ports exports declined from 1946 to 1955, Baltimore alone showing an increase from 1.9 million tons to 2.3 million tons.

As to imports, excluding petroleum products and iron ore, the northern tier ports are not shown to have suffered a marked loss in relative standing since World War II. Their 1955 volume was 11.2 million tons compared with 7.4 million tons in 1946, such volumes representing 58 percent and 55 percent, respectively, of the total of these imports through the north Atlantic ports. Since 1945 their share of that total has ranged from 53 to 58 percent. Boston's share declined from 8 percent in 1946 to 7 percent in 1955 but its volume of 1.4 million tons in 1955 was about 40 percent greater than in 1946. There was little change in Portland's or Albany's relative position from 1946 to 1955 although their tonnage expanded.

[fol. 4910] The imports through New York increased from 6.2 million tons in 1946 to 8.4 million in 1948, while those of Baltimore increased from 2.2 million to 3.3 million tons. By 1955 these had risen to 9.4 million and 4.4 million tons, respectively. Baltimore's increase over 1946 was 2 million tons, but 1.3 million tons of this represented the increase in movement of ores, other than iron ore. Of the 3.2 million tons increase at New York from 1946 to 1955, about 0.6 million was of other ores. While the volume of these ores rose from 0.4 million to 1 million tons at New York it rose from 1.4 million to 2.7 million tons at Baltimore and from 0.6 million tons to 0.7 million tons at Philadelphia.

Foreign traffic embraced in this proceeding.—The record contains no complete comparative data from which the trend of the particular traffic here involved, herein referred to as the subject traffic, to and from New York and the other northern tier ports can be determined. Nor were such data presented for the other north Atlantic ports. The best evidence indicative of such a trend is the following comparison, for the port of New York only, of the subject traffic of the four respondent railroads. The 1955-56 data relate to a test period hereinafter described.

[fol. 4911]

Tons

	1946	1947[1]	1951	August 1955-July 1956
New York Central				
Import	148,073		229,373	149,002
Export	775,644[2]		502,791	515,403
Delaware, Lackawanna & Western				
Import		72,912	163,646	91,492
Export		407,868	273,795	351,108
Total	923,717	480,780	1,169,605	1,107,005
		923,717		
		1,404,497		

[1] 1946 statistics not available.

[2] Does not include grain—statistics unavailable.

	Cars[3]			
	1946	1947[1]	1951	August 1955-July 1956
Erie				
Import	3,969		5,916	3,164
Export	18,807		22,816	19,660
Lehigh Valley				
Import	5,042		5,348	2,939
Export	13,630		14,621	10,555
Total	41,448		48,701	36,318

[3] Tonnage data were not furnished.

The protestants contend that these data reveal a creditable performance under the prevailing differentials. They urge that in evaluating the data it must be borne in mind that 1946 and 1951 reflect the influence of war activities, but nevertheless exports of the New York Central and Lackawanna in the test year exceeded those of 1951, and their imports in that year exceeded those in 1946. Also that such traffic was obtained despite the development in these postwar years of fierce truck competition, affecting particularly general cargo, and in the face of differentials often [fol. 4912] greater than the normal ones here in issue. Other than an unusually high volume of export grain through the north Atlantic ports in 1951, and which was again exceeded in 1956, the years 1946 and 1951 do not seem atypical, as to the kind of traffic herein involved.

As there is a paucity of comparative data relating to the trend in the movement of foreign traffic between the several north Atlantic ports and affected territory, an attempt was made to demonstrate that New York's failure to participate more fully in this traffic is due to large increases in the volume of foreign tonnage through the southern tier ports, and that these tonnages originated in or were destined to affected territory.

In this connection the Authority contends that a very close correlation exists, during the period from 1929 to 1954, between manufacturing employment in the United States and total foreign trade. During that period the number of

manufacturing employees increased by 67 percent and the tonnage of oceanborne exports and imports increased 82 percent. As that tonnage includes large quantities of coal and grain, production of which bears little, if any, direct relation to manufacturing, and also large volumes of import petroleum and iron ore, the movement of which, in the case of the latter, conceivably may be related to manufacturing employment, it is apparent that the validity of this premise is at best doubtful.

The Authority then undertook to show that there is also such a correlation between the total foreign tonnage moved through New York and the southern tier ports and manufacturing employment in the affected territory and the immediate hinterlands of those ports, combined. The increase in such tonnage was 118 percent and in such employment 50 percent, during the same period.

[fol. 4913] Assuming the existence of the stated correlation it reasons that in order to determine which north Atlantic port or ports serves as a gateway for the traffic to and from affected territory it is necessary simply to compare the tonnage flowing through the ports with the manufacturing employment in their hinterlands. It argues that any increase in volume not generated by such employment in the port's hinterland area necessarily represents traffic to and from the affected territory. It then shows data which purport to disclose such a situation with respect to the southern tier ports, i.e. an increase in employment in their hinterland from 1.4 million to 1.8 million contrasted with total export and import tonnage through those ports of 16.5 million and 63 million long tons in 1929 and 1954, respectively.[7] From these it concludes, that there has been an "astonishing increase" through these ports which cannot be ascribed to the relatively small increase in employment in their hinterland, and hence the large increase in tonnage was caused by traffic to and from affected territory. An analysis of the tonnage data demonstrates the unsoundness of the conclusion. The data used were not broken down by commodities but those presented by respondents show that the 19.1 million net tons in 1928 and the 67.3 million net

[7] The volume shown for 1947 is 60.4 million long tons.

tons which moved through those ports in each of the years 1947 and 1954 included the tonnage of commodities shown in the following table:

[fol. 4914]

OCEAN-BORNE TRAFFIC THROUGH SOUTHERN TIER PORTS

(In million of tons)

	1928	1947	1954
Imports:			
Total	11.9	21.4	45.2
Petroleum	4.6	11.3	26.1
Iron ore and concentrates	2.0	5.1	10.3
Exports:			
Total	7.2	45.9	22.1
Coal	2.3	36.8	15.3
Grain	1.1	2.2	2.7

Considering that in 1947 and 1954 more than 75 percent of the total import tonnage and over 80 percent of the exports moving through these ports consisted of the commodities indicated; that shipments of export coal and grain bear little, if any, correlation to manufacturing employment; that petroleum imports do not move into the affected territory; that probably very little in 1947 and less than half in 1954 of the iron ore moved to that territory; and that the aggregate tonnage of the petroleum, coal and iron ore in 1954 was 51.7 million tons, an increase of about 43 million tons over 1928 (no comparable data are of record for 1929) as compared with an increase in total foreign tonnage handled at these ports, 1954 over 1929, of 46.5 million tons, there is little support for the conclusion that the increase in tonnage is attributable to movements from and to affected territory.

The Traffic Studies.—Respondents made a study of the subject traffic, broken down by commodity classes, which moved to and from the several northern tier ports over their lines during a 12-month test period, August 1955 to July

1956, inclusive. The protestant railroads made a similar study of the traffic which they handled through the several [fol. 4915] southern tier ports and also of that to and from New York over the Pennsylvania and Baltimore and Ohio. Traffic data of the Central Railroad of New Jersey to and from New York were made available to them and included in their study. That railroad did not join in publication of the reduced rates to New York and is not a party to this proceeding. Protestants also compiled tonnage data for comparable port traffic handled over the same lines to and from areas other than affected territory. All of those data relating to the subject traffic were combined to present a complete picture of such traffic handled to and from the affected territory in the test year.

While the record lacks comprehensive evidence from which comparative trends of this traffic through the northern tier ports and the southern tier ports can be determined, the data in the combined studies for the test year show, in detail, the volume of the specific commodities, including export grain but exclusive of export coal and import petroleum and iron ore, which moved through each of the ports during that period. These data which are summarized in appendices E and F, by commodity groups and for the two opposing port groups, show the extent to which each port and the opposing groups of ports participated in the traffic in issue at the time of the inception of this proceeding. They are the best evidence which the record affords of the combined relative impact of the present differentials and other circumstances upon the movement of the subject traffic through the several ports.

A much broader variety of imports and exports, especially of the latter, moved through the southern than through the northern tier ports, other than New York. This is particularly true of general cargo commodities.

[fol. 4916] *The import tonnage involved.*—The 2,121,822 tons of imports which moved through the southern tier ports exceeded by far the 676,456 tons through the northern tier ports, but the difference in these volumes is somewhat less than the volume of products of mines, 1,622,761 tons shown in appendix E, imported through the southern tier ports. These products were the heavily predominant group of the

import tonnage here considered which moved through those ports. They consisted almost entirely of ores and concentrates, other than iron ore.

The next largest tonnage is in the manufactures and miscellaneous group, the total of 745,022 tons, being divided almost equally between the two groups of ports. New York obtained 47.6 and Baltimore 28.2 percent of the total.

The chief agricultural imports were coffee and fresh bananas, which represented over 80 percent of these imports. The coffee totalled 135,762 tons and moved almost entirely through New York. Of the total of 117,142 tons of bananas, 62,664 tons moved through Baltimore and 53,946 tons through New York. Thus the only import tonnage which moved in substantial volume as to which the northern tier ports failed to obtain a fairly proportionate share was that of ores and concentrates, exclusive of iron ore.

Boston's imports of 17,739 tons, including 5,088 tons of crude rubber, were somewhat greater and more diversified than Portland's, but were insignificant as compared with the volume for New York or any of the southern tier ports. They were only about 0.6 percent of the total imports, excluding petroleum products, which moved to the affected territory through the north Atlantic ports, contrasted with 1.7 million tons moving through the port in 1955 to all destinations, a volume almost 100 times greater. Imports [fol. 4917] through Portland consisted of relatively small quantities of clay and wood pulp.

The export tonnage involved.—As in the case of imports the preponderance of the 8.2 million tons of exports through all north Atlantic ports, or 63.7 percent, moved through the southern tier ports. The excess of 2,234,171 tons which moved through those ports reflects the greater tonnage of agricultural products consisting of 3,993,051 tons, or 82.1 percent of the total of these products (as compared with 868,000 tons or 17.9 percent through the northern tier ports), offset by the difference in the tonnages of manufactures and miscellaneous. Those tonnages were 1,099,690 tons for the southern tier ports and 1,913,481 tons for the northern tier ports, or 36.5 percent and 63.5 percent, respectively, of the total. New York's share was 63.4 percent

and that of Baltimore 29.3 percent. They included 950,022 tons of manufactured iron and steel, of which 580,073 tons or 61 percent moved through New York and 352,992 tons, or 37 percent moved through Baltimore.

Thus, of the three groups supplying the principal volume of exports, only in the agricultural products group, of which about 88 percent was corn and wheat, were the southern tier ports able to show a greater share of the tonnage than the northern tier ports. Also to be noted is that the proportion of agricultural exports through Boston, Albany, and Portland was 7.4 percent, 2.9 percent, and 1.4 percent respectively of the north Atlantic total, as compared with 6.2 percent for New York. Except for some grain, practically no export traffic moved through Boston, Portland and Albany.

[fol. 4918] *Summary.*—Summing up, of the total of about 11 million tons of exports and imports, exclusive of import petroleum and iron ore and export coal, handled between the north Atlantic ports and the affected territory in the year ending July 31, 1956, about one-third moved through the northern tier ports. The preponderance of the tonnage passed through the southern tier ports but, as to imports, the excess consisted almost entirely of ores and concentrates, other than iron ore, and as to exports, it was represented entirely by grain and grain products. Of the only other group of importance in this case, manufactures and miscellaneous, almost two-thirds of the exports and over one-half of the imports were handled through the northern tier ports. Thus the evidence demonstrates the ability of those ports as a group to attract the preponderance of the tonnage, except as to export grain and import ores and concentrates, the movement of which appears to be largely attracted to the southern tier ports because of more adequate facilities or other circumstances relating peculiarly to those commodities.

The complete dominance by New York of the north Atlantic general cargo traffic to and from affected territory is clear. Of imports, its volume exceeded that of all the other ports combined, was more than double that of Baltimore and almost four times that of Hampton Roads. As to general

cargo exports New York's volume was 62.7 pe: ent of the total volume for all of the ports and over 50 percent greater than that of the southern tier ports combined. It was also more than double the Baltimore volume and more than ten times that of Hampton Roads.

Both as to total exports from affected territory and total imports handled to that territory New York's volume was [Vol. 4919] more than double that of Hampton Roads. Baltimore's tonnage surpassed New York only because of its large volume of export grain and of import bulk ores, other than iron ore. The circumstances incident to these bulk cargo movements are next considered.

Bulk Cargo Commodities.—The respondents call attention to the increase in total exports of grain since 1945 through Baltimore and Hampton Roads and the decreasing volume of such traffic to their ports. The number of carloads of all export grain handled at the several ports in 1945 and 1956, respectively, were as follows: Portland, 8,960 and 1,639; Boston, 6,462 and 10,607; Albany, 2,270 and 13,709; New York 21,419 and 12,639; Philadelphia, 26,423 and 23,423; Baltimore, 43,339 and 51,817; and Hampton Roads, 2,284 and 19,035.

As in the case of other traffic, the record contains little or no evidence showing the trend of grain exports from affected territory. As shown in appendix F, this grain tonnage, however, is a very important segment of the southern tier ports foreign commerce. Grain in the amount of 2,339,309 tons represented more than 70 percent of all the export tonnage herein considered which moved during the test year through Baltimore. This grain was also about 80 percent of the export grain from all origins moving through that port. As also shown in appendix F, grain exported through Philadelphia and Hampton Roads represented over 80 percent of all exports from affected territory through each of those ports. The corresponding movement of export grain through New York was 204,000 tons which was less than 10 percent of the tonnage of all commodities originating in affected territory exported through the port. Such grain was about 35 percent of total grain exports from all territories through the port. Thus the

[fol. 4920] tonnage of grain to Baltimore from affected territory almost equalled the tonnage of all export traffic from that territory to New York. It also represented a much larger proportion of the total export grain movement to Baltimore than in the case of New York.

New York's general cargo tonnage far exceeds that of Baltimore. But protestant railroads have improved Baltimore's position as a port by attracting bulk commodities, chiefly grain and bulk ores, for which they have provided specialized loading or unloading facilities. As to grain, from 1915 to 1924 they constructed 3 modern elevators with high capacity for handling, cleaning and bagging and with storage capacity of 11.5 million bushels. This was increased to 13 million bushels in 1956. They provided berths for loading at least 8 ocean vessels simultaneously, directly from the elevators. Meanwhile New York continued to lead Baltimore by a wide margin in the export of grain through 1943. Notable in contributing to its supremacy were the large proportion of parcel lot shipments moving in liners affording direct service to foreign ports, and the availability of grain exporters at the port. Also, ships could load grain from lighters while taking on general cargo on the pier side, thus effecting important savings.

With the heavy government exportation after World War II and its need for storage capacity the Baltimore facilities have attracted expanding volumes, which began to move increasingly in full-cargo lots. The ample storage capacity provided space to accumulate them.

Despite its pre-war leadership, New York's elevator facilities and storage capacity of 10.75 million bushels in 1905 dwindled to 3 elevators, one of which has no direct rail [fol. 4921] connection and another only limited storage capacity. Their combined capacity is now only 4.5 million bushels. The construction of a 13.5 million bushel capacity elevator at Albany in 1932, presently operated by a private interest, also affected the distribution of export grain among the north Atlantic ports through the years. However, significant changes beginning in 1952 reflect the increasing importance of commercial operations, with the government's activity of less relative importance. Parcel lot shipments are increasing and large exporters have leased or

constructed elevators at Boston and Norfolk, in addition to the private operation at Albany. For many years prior to May 1, 1952, the Norfolk and Western operated its Sewall's Point elevator at Norfolk. On that date it leased it to Continental Grain Company. Private operation enables the merchant to blend and upgrade the grain, including grain purchased from trucks. Receipts at this elevator which ranged from a few hundred to 1,749 cars in the years prior to 1945 and from 2,100 to 4,300 cars from 1945 to 1951, rose to 22,316 cars in 1955. The operators of such facilities will no doubt continue to use them as intensively as possible, irrespective of the inland freight rate. Also steamship lines at New York have begun to allow shippers a discount of 50 cents per ton from the ocean rates if the grain is loaded by lighter and floating elevator while the vessel is docked at a general cargo pier. Beginning in early 1957 the Commodity Credit Corporation has sold grain delivered on track at any north Atlantic Port at the same price, thus absorbing any differential in inland freight rates.

The combined result of these circumstances has affected Baltimore's grain traffic. Its share of north Atlantic exports [fol. 4922] declined from 47.6 percent in 1952 to 36.2 percent in 1956 and 25.4 percent in the first 9 months of 1957. In the same period Norfolk's share increased from 5.6 percent, to 19.9 percent, Boston's share from 5.6 percent to 14.5 percent, and New York's share from 6.4 percent to 11.1 percent.

Baltimore has also made special efforts to attract low grade bulk imports such as chrome and manganese ore, which move both in full-cargo lots or large parcel lots of from 2,000 to 5,000 tons. Three railroads have built special ore handling piers with high capacity, efficient, unloading facilities, permitting fast discharge of vessels and dispatch of the ore to the consignee. These facilities began operation in 1917, 1930, and 1951, respectively. Their use in 1956 was substantially less than maximum capacity. Originally built to handle coastwise cargoes of sulphur and phosphate rock as well as these ores, such coastwise receipts have almost disappeared, but with increasing demand for import ore following the war these installations provided efficient facilities to attract it.

Almost all of the 218,151 tons of fertilizer from affected territory exported through Baltimore in the test year was sulphate of ammonia, one of the most important bulk commodities exported through the port. About 80 percent of this is bagged at the piers, using specialized facilities. No other north Atlantic port except Hampton Roads has provided such facilities. Also special bulk loading facilities have been installed to handle the bulk portion of this commodity.

The characteristics of the harbors at the several ports, their proximity and relative ease of access to the open sea, the scope and variety of yards and other rail terminal [fol. 4923] facilities and equipment provided, and the types, capacities and locations of the various physical facilities, including piers, grain elevators and other installations at those ports are shown in detail by the record.

Expenditures for development of physical facilities at north Atlantic ports in the years 1946 to 1955 aggregated $266,000,000. The portions expended for general cargo facilities and specialized facilities at the principal ports are shown in the following table:

	Number of New General Cargo Berths	Expenditures, 1946-1955 (Millions of dollars) General Cargo Facilities	Specialized Facilities
New York	32	$ 92	$22.7
Boston	10	29.3	6.
Total	44	121.3	28.7
Baltimore	2	6.8	25.8
Philadelphia	4	6.2	27.6
Newport News	2	1.4	22.6
Norfolk	4	6.5	5.2
Total	12	20.9	81.2

From the foregoing it is apparent that in making these expenditures the southern tier ports have stressed spe-

cialized and bulk cargo facilities while New York and Boston have emphasized general cargo facilities.

New York is not only the largest tonnage port but its share of the total value of United States foreign trade also is the greatest. The Authority reported the 1956 value of foreign commerce moving through the port as $8.3 billion, a 7 percent increase over 1955 and 31 percent increase over 1954. The value of all exports and imports through New York in 1955 was $7.2 million, compared with $3 million for the southern tier ports combined. The total value of such commerce for New York was 43.7 percent of the United States total, as compared with 39.6 percent in 1954. [fol. 4924] The average value per ton in 1955 of exports-imports, exclusive of export coal and grain and import ores and petroleum was $444 for New York and $247 for Boston, compared with $145 per ton for Philadelphia, $164 for Baltimore and $287 for Hampton Roads. The last amount reflects the value of tobacco exports, very little of which originates in differential territory. If tobacco is excluded the average for Hampton Roads was $153. The total dollar value of annual exports-imports through New York from 1887 to 1899 was roughly 9 or 10 times that of Baltimore's. From 1920 to 1925 this increased to about 20 times, which ratio continued long after 1935. With the increase in volume of bulk cargo after World War II the lower ratio again generally prevailed.

Weight to be accorded the distance element.—There is much evidence in the record relating to distances by rail between representative points in affected territory and the several north Atlantic ports, including Canadian ports, also between them and other interior points and south Atlantic and Gulf ports, and by ocean between these United States ports and representative overseas ports. The respondents and the northern tier port interests deny that they have any significant disadvantage in such rail distances as compared with the southern tier ports. Any distance disadvantage they may have is much less than the substantial differences in distances to and from other ports which have a parity or near parity of rates, including the Canadian ports and the wide differences which obtain as to the several

south Atlantic and Gulf ports. The southern tier ports, particularly Baltimore, emphasize the advantage in distance which they have to and from certain points in the affected territory. It is apparent however, that considerable disregard of rail distance is characteristic of all port ad- [fol. 4925] justments, as it was in the establishment of the rates here dealt with. *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I.C.C. 691, 696. In considering this matter in an early proceeding, *In the Matter of Differential Rates, supra* (1905), and the justness of the suggestion that each port should be given the rate to which its location entitles it, the Commission observed that traffic does not stop at the ports but moves to foreign destinations, that more important was the fact that as seaports the four large cities from Boston to Baltimore, inclusive, had a fundamental advantage of location which entitled them to participate in the foreign trade, and that the public interest required that this right be recognized. It concluded that the rates should be so adjusted that this competitive traffic would be fairly distributed between the different ports and the railroads which serve them. That this is also the purpose of the 1935 amendment to section 3 of the act was indicated in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co. supra; Nueces County Nav. District No. 1* v. *Baltimore & O. R. Co.*, 223 I.C.C. 75, 96; and *Port of New York Authority* v. *Baltimore & O. R. Co.*, 248 I.C.C. 165, 179. In the first of these reports, at page 162 the Commission said:

> "The port rates * * * have, as their chief objective, the maintenance of a competitive relation between the ports. They are not distance rate * * * adherence to the distance principal is incidental and always gives way when necessary to the maintenance of the differential relation between the ports."

Steamship Services at North Atlantic Ports.—The types of ships engaged in foreign commerce on routes to and from the United States north Atlantic ports include those able to carry a wide variety of cargo, some specially designed to carry only one or more types of cargo, various types

[fol. 4926] of general cargo vessels which also are fitted to carry some specific types of cargo, or specialized vessels which are equipped to also carry some general cargo, generally on deck. The more specialized types are tankers, refrigerated ships, and coal carrying vessels. General cargo vessels can carry all kinds of dry nonbulk cargo, as well as some dry bulk cargo, such as grain. Where such vessels have specialized space this very often is adaptable for use in carrying general cargo as well. Thus there is some degree of flexibility as to the kinds of cargo which vessels of the various types may carry.

Three types of vessel service are available for ocean cargo. "Liners" are operated by the steamship line on schedules, at regular intervals between designated ports. "Tramps" on the other hand do not operate on schedules, but sail wherever traffic is available. They are the contract carriers of the water shipping business, are usually smaller and slower than liners, and may take a full load for one shipper or partial loads for several shippers. The third kind of service, not important in most foreign trade, is performed by shipper owned vessels. They may carry freight for-hire as well as for their owners account.

General cargo, especially where delivery time is of importance, is most often carried by liners, since the shipper can rely on their published schedules. Where time of delivery is not crucial he may occasionally ship by tramp or when liner space is short, all shippers will use tramps, which generally carry bulk cargo, such as coal, grain, sulphur, fertilizer, or ores and bulk liquids. Shipper-owned vessels usually carry bulk and specialized cargo such as oil, coal, ores and refrigerator cargo.

[fol. 4927] The frequency and quality of sailings at a port are largely dependent upon the availability of cargo. If the volume of traffic is adequate, good and frequent sailings will be available. Rescheduling and rerouting of vessels to take advantage of cargo availability are relatively simple matters. Frequently the only consideration, except where the cargo is not suited to the type of vessel space, is whether the new cargo represents a profitable haul as compared with other uses which may be made of vessels.

Liner operators commonly call at more than one port in a range so that vessels sail fully loaded, and their schedules are altered accordingly. Rerouting of tramps operating on voyage charter to secure desired cargo is characteristic of such an operation. Thus as to these types of transportation availability of freight is a primary consideration and savings which may be achieved through direct sailings are only possible when freight is available.

The most important factors which influence the shipper of export or import freight in the choice of a port are the total cost of hauling the goods, the total time in transit via competing ports, and the service available at each port. The hauling cost involves principally the ocean freight and the rail freight rate. Other lesser items are possibilities of damage due to excessive handling in congested ports and of incurring storage due to congestion or delayed sailings. Time in transit includes that necessary for the ocean voyage and rail movement and any waiting in port, as a result of congestion or lack of sailings.

Importance of time in transit depends upon the kind of freight. As freight rates are small in relation to the value of high grade freight they may be of less concern to a [fol. 4928] shipper than time in transit, and dissuade him from routing such freight over a lower cost route when the higher cost route affords the quickest service. On the other hand, the shipper of low grade freight, as to which the cost of haul represents a greater proportion of the delivered price, must use the lowest cost route to remain competitive, and time in transit is a secondary consideration. Port services, particularly forwarding, banking, insurance, brokerage service, and availability of sailings are important, but relatively less so in the case of low-grade freight than of high-grade tonnage. Also, shippers of low-grade commodities such as ore, grain, coal and other bulk cargo which usually move in fungible and continuous lots, are not greatly concerned with time in transit.

Comparison of dry-cargo vessel services at New York and Baltimore.—The consist of water borne tonnage at the southern tier ports is for the most part bulk cargo, such cargo comprising about 90 percent of Baltimore's tonnage.

Acting on the premise that the volume of general cargo which they can attract is a significant measure of the economic wellbeing and prosperity of a port community, these ports presented a comparative study of general dry-cargo steamship service available at the 5 major north Atlantic ports. Based on data supplied by the United States Maritime Administration showing all general cargo vessels in foreign trade calling at one or more of these ports in the 6 months ending December 31, 1955, which is indicative of the relative quantity and quality of the service available, the following comparisons were developed:

[fol. 4929]

	Number
Ships calling at New York	2,720
Ships calling at Baltimore	1,357
Ships calling at New York but not at Baltimore	1,532
Ships calling at Baltimore but not at New York	181
Ships that both loaded and discharged general cargo at New York but not at any other of the 5 ports	678
Ships that both loaded and discharged general cargo at Baltimore but not at any other of the 5 ports	19
Direct inbound ships unloading general cargo:	
At New York	1,451
At Baltimore	171
Direct outbound ships loading general cargo:	
At New York	1,767
At Baltimore	149

The order in which ships arrive at and depart from the several ports included in their itinerary is important to shippers, particularly of general cargo. Topping off with such cargo at New York is a primary characteristic of the trade. As indicative of the superior quality of the service at that port a count of vessels which called there and at Baltimore during this period, and the elapsed time between

their arrival at or departure from one as compared with the other, showed that as to earlier arrivals New York was favored with an advantage of 882 ship days, while Baltimore's advantage was 246 ship days. The advantage in later departure time was 1,039 and 199 days, respectively. Numerous other comparisons show New York's preeminence in general cargo services and in direct sailings over the major trade routes. For example, New York had 1,792 direct general cargo departures to 180 first foreign ports of call, contrasted with 162 such departures from Baltimore to but 53 such foreign ports. New York had 1,475 direct general cargo entrances from 200 different last foreign ports of call, as compared with 229 and 89 for Baltimore.

[fol. 4930] Data to rebut the foregoing showing were presented on behalf of New York. These, however, relate to dry cargo tonnage and to dry cargo vessel sailings for 1951 and 1956 at New York and Baltimore. As they include bulk cargo tonnage, such as large volumes of coal and iron ore, and vessels reported as bulk cargo carriers they are not indicative of the general cargo services available at those ports.

The record is convincing that New York has a preponderance of excellent steamship services as compared with the southern tier ports; and that its general cargo services far surpass those at such ports, and afford much more frequent sailings and service to and from a far wider range of trading areas. New York concedes its supremacy in this respect, but contends that its superiority is rapidly diminishing. To support this claim it relies also on dry-cargo vessel sailings, including bulk cargo vessels which handle increasing volumes of coal and iron ore and some grain, of which only the latter is embraced in this proceeding.

Because of more frequent steamship services to a wider range of foreign ports available at New York than at southern tier ports, expenses incurred by shippers incident to delays at the latter are frequently avoided at New York. Free time accorded by the railroads, and wharfage and storage charges on import and export freight when held on their piers, are the same at all north Atlantic ports. This free time is 7 days on export freight and generally 5 days

on import freight. On freight held longer on such piers storage charges of 7.5 cents per 100 pounds for the first 10 days, apply.

At New York, except for a few railroad owned piers of little or no importance which are used for loading or un- [fol. 4931] loading ores and scrap, the railroads have no piers comparable to regular cargo piers provided by them at the southern tier ports. Pier facilities at which the terminal operations of steamship lines are conducted are leased by those lines from the city of New York or the Authority. Except for the banana traffic which is unloaded at a private terminal operated by the United Fruit Company at Weehawken, N. J., ships loading and discharging general cargo do not dock at the railroad terminals in New York harbor. Such traffic moving to and from New York is unloaded from or loaded to cars at railroad pier facilities mainly on the New Jersey side of the harbor, and lightered or trucked in lieu of lighterage, between these piers and the steamship piers at various points in the harbor.[8] On export traffic within the free time period the consignee or exporter orders the freight delivered by lighter to the steamship lines pier. Thus storage charges on export freight which accrue after the expiration of free time when the freight is assembled on railroad piers, as at the southern tier ports, can be avoided at New York by ordering delivery to the steamship line piers within the free time. On import freight discharged at New York to a pier controlled by the steamship line the line allows the consignee 5 or 6 days to remove the freight. Since the railroads do not receive this freight directly from the ship no question of free time arises as to it.

The cost to the shipper occasioned by the delay which occurs between loading at Baltimore and departure from New York (or arrival at New York and unloading at Baltimore) is frequently greater than the differential. A map exhibit presented by the Authority showing rail terminal

[8] A description of the rail and water terminal facilities at New York, the ways in which freight is handled at that port, and the lighterage limits of the harbor may be found in *Lighterage Cases, supra*, at pages 484 to 488.

[fol. 4932] facilities at New York carries the inscription "Save Time—Save Money. Ship Via Port of New York". The witness through whom it was offered explained that the money saving would vary with individual shipments of a large variety of producers in the affected territory but that the Authority believes that on some of their shipments, dependent upon the facilities and services available at New York, such savings are effected.

[fol. 4933] *Supplementary Port Services at North Atlantic Ports.*—New York, in addition to its preponderance of steamship services, has a wealth of supplementary port services. Their several functions and the influence which they exert were shown in detail by the protestant railroads in a comprehensive survey of twelve different types of such services available at the southern tier ports and New York. They include international freight forwarders, custom house brokers, international banking facilities, steamship line representation, consular services, combination export managers, foreign trade zones, commodity exchanges, ship brokers, marine insurance, foreign government purchasing agencies, and foreign chambers of commerce. Among other functions these contribute to the speed and promptness of movement of cargo, thus effecting reductions in interest charges and meeting of letter-of-credit deadline, and avoidance of charges and penalties which arise from unfamiliarity with the demands of foreign trade procedures.

The survey disclosed a notable concentration of these and other interrelated services at the port of New York. Among other advantages of such concentration, not readily appraised, are the personal contact necessary in the effective movement of cargoes, the knowledge of experienced personnel, and the specialization available in all types of services, particularly required by various types of cargo.

Although the record is replete with details as to New York's superiority as to each type of service organization only the principal ones relating to international freight [fol. 4934] forwarders will be set out. Their principal duties include the tracing of shipments to the seaboard where their principal offices are generally located, and, when necessary, to the foreign destination; booking or ar-

ranging for cargo space and the consolidation of ocean shipments; preparation and processing of necessary papers relating to the exporting of shipments; clearance of the shipments in accordance with regulations of the United States Government and arranging for certification of consular documents; clearance of imported commodities through United States customs when the forwarder functions as a custom house broker. The forwarder also may arrange for cargo insurance, packing and crating, inspection, marking and warehousing or storage. The foregoing services are essential in promoting foreign trade and are relied upon by shippers and consignees as well as the ocean carrier whom the forwarder serves as agent. The forwarder also provides information on ocean and land freight rates, sailing schedules, sales outlets and sources of supply in this country and abroad, and rules and regulations affecting foreign trade. In his capacity as agent of the ocean carrier he collaborates in the solicitation of business, performing an essential service and substantially influencing the movement of the traffic through ports where his offices are located, rather than through a rival port where his fees must be divided with the agent there employed.

The number of registered foreign freight forwarders who have their main or branch offices at each of the ports is as follows:

[fol. 4935]

	Main Offices	Branch Offices
New York	924	55
Portland	4	(1)
Boston	23	(1)
Philadelphia	29	11
Baltimore	23	16
Hampton Roads	13	10

(1) no data shown

International freight forwarders maintain 49 main offices and 60 branch offices at points in differential territory. Of 32 main offices of those branches located at the four ports 31 are in New York, and one in Philadelphia. Branches of New York firms constitute 44 percent of all such forwarders in Chicago.

A number of shippers in the affected territory testified in support of the proposed equalization. A manufacturer of paper products at Middletown, Ohio receives from 10,000 to 15,000 tons of woodpulp each year. It is bought f.o.b. Baltimore, because of the lower import rate than from Philadelphia, New York or Boston, but its tonnage moves either via Baltimore, or via Portland over differential routes through Canada on rates the same as from Baltimore. Its export shipments of 1,500 to 2,000 tons per year move through West Palm Beach, Fla., New Orleans, La., or Norfolk, Va., because of more favorable freight rates. A steel producer with plants in Pennsylvania, Ohio, and Michigan ships 95 percent of its export traffic through Baltimore because of the freight differential as compared with [fol. 4936] the northern tier ports. Equalization of the rates to these ports would make available to it more sailings than the port of Baltimore affords. A manufacturer of pig iron and ingot molds at Farrell and Sharpsville, Pa., exports a substantial volume of pig iron, about 80 percent of which moves through Baltimore and the remainder by rail-barge routes through New Orleans. The shipments move through Baltimore because of the lower rates than to northern tier ports. If the rates were equalized it would use all of the ports. A large manufacturer of steel, through its export subsidiary, exports over 100,000 tons of plates, sheets, and other articles from 5 plants in the affected territory. As to most of this it controls the selection of the port and a substantial portion is routed through Baltimore and Hampton Roads because of the differential. Where foreign purchasers control the routing those ports are also used extensively. The Union Carbide Corporation imported 378,438 gross tons of chrome and manganese ores in 1956 at 3 of its plants in Ohio and West Virginia, which are in affected territory except as to Hampton Roads ports. Less than 1 percent of this moved through New York and less than 2 percent through Philadelphia. The remainder entered at Baltimore from which the rates are 60 cents and 20 cents per gross ton lower than through New York and Philadelphia, respectively. These ores arrive in ship-load lots at ports designated by the receiver. Frequently the plant to which the ore will ultimately move is not known

and the ships are ordered to Baltimore to obtain the lowest inland rate. With equal rates ships could be allocated freely according to the ports' ability to accommodate them, per- [fol. 4937] mitting of more equitable allocation of cars required for loading and avoiding congestion at the ports.

Insofar as the attitude of these shippers as respects the weight which they accord the differentials in their choice of a north Atlantic port may be accepted as representative of those throughout the affected territory, it is significant that they generally regard them as a controlling consideration.

The Port of Boston Commission lays stress on the fact that the port of Boston has been able to attract but little affected territory traffic and that the respondents, including the Boston railroads, since about 1935 have operated under a serious handicap. It urges that the reduced rates for Boston are lawful and should be permitted to become effective regardless of the conclusion which may be reached as to the respondents' proposal as it relates to New York. The only issues which that proposal presents are the broad ones concerning equalization of the northern tier ports as a group with Baltimore. None of the respondents suggests that it raises any issue as to the lawfulness of any changed rate relationship between New England ports and New York. Accordingly the Commission may not treat the tariff concurrences of respondents joining with the Boston railroads as broader than necessary to accomplish equalization of the northern tier ports as a group.

An analysis of Boston's foreign trade tonnage since 1945 shows that it is primarily an importing port for bulk cargoes, which totaled 44 million net tons in the years 1946 to 1955, inclusive, or about 82 percent of its imports. They moved almost entirely to destinations in or near the Boston [fol. 4938] switching district. Of 10,140 carloads of general cargo imports in the test year, only 680, or 6.7 percent, moved to the area west of Buffalo-Pittsburgh, and 8.4 percent moved to Canadian destinations. Of the 680 cars, 270 moved over differential routes through Canada at rates lower than the standard route rates. In that year, of 6,713 cars of general cargo exports, only 93 or 1.3 percent, originated at and west of Buffalo-Pittsburgh, and of the 773

cars which moved to or from that area only 30 percent moved over the New York Central into or out of Boston. Including grain, the Boston railroads handled only 5.6 percent of the export cars and 1.4 percent of the import cars which moved between the affected territory and Boston, Philadelphia, Baltimore and Hampton Roads. The bulk of the foreign traffic in which the New Haven participates is that moving to and from nonaffected territory, principally New England. As to this segment the great preponderance of the imports and the major portion of the exports aggregating about 7,000 carloads in the year ending July 31, 1956, flow through New York. Its traffic witness stated on cross examination that as compared with other railroads serving that port it was under a definite disability in competing for traffic from and to affected territory. Grain, Boston's principal bulk export, averaged about 18 million bushels annually from 1907 to 1919, and 5.2 million bushels from 1920 to 1955. The port attributes the decline to loss of its ocean rate advantage which tended to offset the inland differential at the southern tier ports.

[fol. 4939] New England imports many raw materials from which it manufactures relatively low-density and high-valued articles. These, when exported are generally referred to as top cargo and seek a port which has a multitude of shipping services. As the area has few heavy, basic industries and produces few basic raw materials Boston lacks sufficient bulk and bottom cargoes and commodities such as heavy machinery, automobiles and trucks to attract ships. As a consequence the limited sailings from the port deter shippers in its immediate hinterland from using it, causing further reductions in ship calls. Scheduled sailings for representative periods which Boston shows were 473 at New York, 220 at Philadelphia, 242 at Baltimore, 175 at Hampton Roads, and 65 at Boston. Of the latter, in 47 instances Boston was the first port of call to pick up export cargo, the least desirable schedule position.

Considering that a very substantial majority of the north Atlantic ports general cargo is attracted to New York despite its differential over the southern tier ports and over Albany, the failure of Boston, with rates the same as New York's, to attract a larger volume of the traffic must be

ascribed to factors other than an unfavorable rate relationship. The fact that much of the New England export-import traffic moves through New York confirms this. As to grain from the affected territory, traffic said to be more sensitive to rate differences than general cargo, Boston has been able to attract considerably more than New York. Such marked difference in Boston's ability to attract these two types of traffic strongly suggest the existence of influences affect-[fol. 4940] ing the choice and use of ports far more powerful than the present port differentials. The Commission, referring to a decline in Boston's tonnage prior to 1921, observed that the extent to which this resulted from the port differentials was difficult to determine, and that one contributing cause of the difficulty was that Boston had equal rates with New York, its nearest and most powerful competitor. *Maritime Asso., Boston Chamber of Commerce* v. *A.A.R. Co.*, supra, at pages 563-564.

In support of the argument that so long as the differential continues virtually no affected territory traffic can move through Boston, that port points to the much larger movement of woodpulp to affected territory from Portland than from Boston. It attributes this to the fact that Portland's import rates are on the Baltimore basis and lower than those through Boston. It argues that this confirms the testimony of shippers and transportation experts who testified in support of the proposed equalization.

The import rates from Portland have been on the Baltimore basis for over 30 years. Being ice free in winter that port serves as a winter port for Canada and is accorded the same import basis as Halifax, St. John, and Montreal, on traffic routed through Canada. The record shows that the impact of the differential is of itself insufficient to influence the movement through Portland. Virtually the only commodities which are imported through the port are woodpulp and china clay for which special handling facilities are provided at that port. They are raw materials used in the paper industry which is Maine's chief industry. As less than one [fol. 4941] fifth of the woodpulp and one fourth of the china clay move to affected territory it is evident that such movement is merely incident to the movement through Portland for the local market.

Boston, seeking to show that the differentially lower rates from the southern tier ports are an absolute bar to its participation in the north Atlantic traffic, also relies on evidence presented by the General Services Administration, an agency of the Federal government, which supports respondents. This agency directs the routing of about 300,000 tons of import traffic annually to the affected territory but it moved no imports through Boston in 1955 and only 339 tons in 1956. In those years 294,000 and 195,000 tons, respectively, of its imports moved through Baltimore. The remainder of its north Atlantic imports moved through Hampton Roads and Philadelphia. Its witness testified that it favored equalization as that would enable it to route traffic equitably between the various north Atlantic ports. However, it moved none through Portland, although the same rates are available from that port as from Baltimore.

The Maine Central, supported by the Maine Port Authority, The Associated Industries of Maine, and the Maine State Chamber of Commerce introduced evidence in support of maintaining the present differential on imports through Portland to the affected territory. They assert that any reduction of tonnage resulting from its elimination would have serious economic effect upon the entire State of Maine, as it now has few scheduled sailings, and as to imports, no regular arrivals. If entry of the only imports, woodpulp and clay, should be shifted to other larger ports [fol. 4942] outside the State it would result in additional expense for land transportation to Maine industries, adversely affecting their competitive position.

The Maine Central expects no increase in exports to Portland if equalization is effected as any export traffic which might be diverted from the southern tier ports would be attracted to the large volume ports of New York or Boston. It points to the decline since 1952 in the volume of import woodpulp which it handled from Portland to the affected territory as an indication that the differential is not of sufficient importance to maintain or increase this movement.

The imports of china clay through Portland increased from 46,938 tons in 1947 to 73,564 in 1956. The Maine Central movement to affected territory increased from 10,266 tons in 1952 to 16,408 tons in 1956 as the result of

solicitation by rail and port representatives and a large investment for handling and storage facilities at Portland. These facilities mostly of recent construction, have 14,500 tons capacity and were designed especially for china clay. No import china clay moves through Boston as there are no special facilities necessary to handle it at that port.

Rates to and from Albany.—Export and import rates between Albany and the affected territory have been the same as those to and from Philadelphia since 1936. However, except for some export grain, averaging about 15 per cent of the movement through all north Atlantic ports since 1946, traffic between Albany and that territory has been almost negligible. Excluding export grain and coal and import iron ore (of which none moves through Albany) and petroleum, it has attracted less than one percent of the [fol. 4943] total movement through north Atlantic ports. Of the tonnage moving during the test year only 1.7 percent of the exports and 0.1 percent of the imports through those ports moved through Albany as contrasted with 10.6 of the exports and 6.6 percent of the imports through Philadelphia.

The port takes the position that the present adjustment discourages or prevents its use; that it deprives it and shippers using it of just, reasonable, and nondiscriminatory rates; and that its favorable geographic location, being served by a water-level rail route and transportation over the barge canal and the Great Lakes, warrants a lower level of rates based on value-of-service as well as cost-of-service considerations. Accordingly, to encourage and promote freedom of movement through the port, it urges that it should be accorded rates no higher than those to and from Baltimore and Norfolk.

Government Export Shipments.—The United States Department of Agriculture, through its Commodity Stabilization Service and Commodity Credit Corporation exports large quantities of grain and processed foods through the north Atlantic ports, generally paying the transportation cost to the port of exit. It favors equalization of these ports at the lowest level of lawful rates because of the benefits which producers and shippers of these products and its export program would derive therefrom. Selection of a

port of export involves many factors. Many problems are encountered in routing the shipments such as car supply, terminal charges, availability of warehouse or elevator fa- [fol. 4944] cilities at the ports, and the coordination of their arrival with sailing schedules. Other conditions, such as strikes which are beyond control of the Department, also influence the movement. Its field offices directing the shipments, other things being equal, use the port which will afford the lowest cost, but in some circumstances the port designated or preferred by the receiver is used.

In the year ending May 31, 1957, about 235,000 tons of processed foods were shipped at the direction of its Chicago and Cincinnati offices from undisclosed origins. Of these 48,000 tons moved through Philadelphia and somewhat less through Baltimore, Norfolk and Newport News. About 62,000 tons moved through New York, 6,000 tons through Boston and none through Albany or Portland. Shipment of grain by these offices from January 1 to June 14, 1957, were about 53 million bushels, of which about 29 million moved through the southern tier ports and 24 million through the northern tier ports, including about 11 million bushels through Boston and 9 million bushels through Albany.

Government-controlled import traffic.—The General Services Administration, an agency of the Federal Government, presented evidence in support of the respondents. It states that in the interest of economy, its duty and interest is to seek the lowest reasonable rates "in the furtherance of its shipper * * * interest", as a representative of the Government's executive agencies, and that with respect to foreign commerce this means that, other factors being equal, it should route its traffic through the ports having the lowest transportation cost. Accordingly it favors equalization [fol. 4945] because it would enable it to select the port used on the basis of efficiency and service.

It presented no data as to its export traffic, which is of much less importance than the imports, but its choice of ports of export is dependent principally upon availability of sailings and total landed cost to the foreign destination. In 1955 and 1956 the tonnage of imports through North Atlantic ports to the affected territory for which it was in a

position to designate the port of entry and which represents about 60 to 70 percent of its imports, was as follows:

	1955 (Tons)	1956 (Tons)
Boston		339
New York[1]	22,246	26,598
Philadelphia[1]	54,797	14,951
Baltimore	294,515	195,805
Newport News	21,404	30,340
Total	392,962	268,033

[1] Includes movements through other ports or subports in the same area.

The imports through Baltimore were principally ores, other than iron ore. Although the differentials are important to it from an economy standpoint, many considerations other than the rail rates affected the selection of the port used. Among those cited are the practices of private industry and established markets, such as the principal market for crude rubber, which is in New York, and the fact that at that port the best inspection service is available. Also, vessel operators have some measure of control over ports of call and will schedule only those at which there is adequate traffic. That such considerations often have controlling importance is shown by the movement through Newport News which was only about a tenth of that through [fol. 4946] Baltimore and that, except for a small volume through Boston in 1956, no northern tier port other than New York was used, although such ports afford rates the same as or lower than those from New York.

Other grain shippers.—The Board of Trade of the City of Chicago, two large grain dealers with elevator capacity of 11,000,000 bushels in that city, and a cooperative association of country elevators in Iowa and Minnesota, which operates large elevators in Des Moines, Iowa, and Chicago, all of whom are interested in export movements of grain, presented evidence in support of the proposed equalization. On grain from Chicago as well as from Duluth and Minneapolis, Minn., Peoria, Ill., and St. Louis, Mo., and

other midwestern markets the rates to the ports of Baltimore and Hampton Roads and the Gulf ports are generally the same. Those to New York and Boston are one and one half cents higher, equivalent to $9,000 on 1,000,000 bushels of wheat. Despite this difference substantial volumes of grain from affected territory move through Philadelphia and the northern tier ports. Due to the keen competition in the marketing of grain and in the interest of an expanding export trade these parties urge that equalization of the Gulf and north Atlantic ports be accomplished by applying the Baltimore basis of rates to all ports.

Other evidence of Protestants.—In support of the contention that the proposed rates would not be compensatory the protestant railroads submitted a cost study purporting to show that the out-of-pocket costs of performing the service covered thereby would exceed the revenue from them. Similar studies were introduced relating to the rates [fol. 4947] between Boston, Philadelphia, Baltimore, and Hampton Roads and representative inland points. The inland terminal and line haul costs were based on so-called Rail Form A average unit costs, for class I railroads in the Eastern District, as shown in statement 1-57 by the Commission's cost-finding section adjusted to reflect the wage and price level of January 1, 1958, with-line haul costs computed to reflect a factor of 13 percent circuity over short-line distances. The principal area of controversy as to costs concerns a third element, the port costs at New York, protestants' position being that these are solely related to the import-export traffic and that the marine and lighterage pier expenses are 100 percent variable with changes in volume of traffic. Port costs relied upon were not computed for export-import traffic loaded or unloaded directly between car and ship, and they are not representative of the cost of handling bulk commodities which use special facilities. They relate only to the predominant method of handling the traffic at New York. The respondents made no study of costs, considering that in view of the relatively minor amounts of the reductions such a study was not needed to establish that their rates would be compensatory. Their position is that because of diminished traffic volume

unit costs based on present day tonnages would reflect the large investments in port facilities and equipment made in times of greater traffic volume.

As the respondents' records were not available protestant, in computing the port costs at New York, rely upon special studies showing a weighted average of those costs [fol. 4948] for the Pennsylvania and the pooled port operations of the Baltimore & Ohio and Central of New Jersey in New York harbor. These carriers handle about one third of the involved traffic to and from that port.

Respondents made numerous criticisms of the studies, particularly of the port costs, and a number of revisions were made responsive thereto. However, because of the conclusions hereinafter reached as to a more fundamental matter it is unnecessary to evaluate the proffered cost evidence, or to give it further consideration.

In the test year about 55 per cent of protestants' export-import traffic of the commodities embraced herein through the southern tier ports was to and from affected territory, and 63 percent of that traffic between Baltimore and Hampton Roads and the interior moved to and from that territory, while only about 40 percent of the export-import traffic of the New York Central originated or terminated in that territory. Data for which a comparable ratio for other respondents serving New York might be determined were not supplied. The relatively small proportion of Boston's traffic which moves to and from that territory has already been shown. Thus, it is apparent that the southern tier ports, especially Baltimore and Hampton Roads, are much more dependent upon such traffic and have far less support in the hinterlands which they serve than the respondents.

Data compiled from the traffic study show that of the involved traffic which moved through New York and the southern tier ports over 50 export commodities and about the same number of import articles moved exclusively [fol. 4949] through New York; that over 90 percent of the following exports moved through that port: Flour, ammunition, fresh meats, automobiles and trucks, n.o.s., soybean oil, agricultural implements, glassware, paint, forwarder traffic, and passenger automobiles. From 70 to 100 percent

of the following imports, representing the more substantial tonnage volumes, also moved through New York: Copper, 100; coffee, 99; waste materials, 92; metals and alloys, 86; crude rubber, 81; agricultural products, 71; and lead and zinc, 70 percent. The volume of each of the commodities named exceeded 10,000 tons.

Carload export traffic, other than coal, coke, and grain, unloaded at United States north Atlantic ports increased from 203,432 cars in 1939 to 303,149 cars in 1956, an increase of about 100,000 cars. Of that increase 57.7 percent was at New York; 7.4 at Philadelphia; 17.1 percent at Baltimore; 13.6 percent at Hampton Roads; and 3 percent at Boston.

The protestant railroads stress the superiority of the facilities available and the services provided at New York, as compared with the southern tier ports, and which they contend increase the value of the transportation service at New York to such an extent as to require differentials much greater than the present ones. The potency of these factors is also emphasized particularly as it bears upon the validity of the claim of competitive need, relied upon by the respondents. Protestants and their supporting port interests take the position that as the southern tier ports afford no service advantages comparable to those provided by New York, their only competitive appeal is in the rate differential, and if that is lost there will be no incentive to use [fol. 4950] those ports and the more desirable services of New York would be available at equal rates.

The principal, and in some instances the only reason given by one of respondents' traffic officers and by the shippers and receivers in affected territory who testified in support of equalization, for diverting their traffic from the port of New York to the southern tier ports is the lower freight rates which the differentials provide. A large exporter of grain which operates elevators at Albany and Norfolk who testified in support of respondents attributed the much greater volume of grain exported through Baltimore and the increased volume through Norfolk to their freight rate advantage, as by far the largest factor.

Some of these shippers who use the southern tier ports stress that rate equalization would provide them relief

from congestion at those ports, excessive demurrage charges, delays in unloading, difficulty in scheduling rapid transportation and maintaining a more even flow of traffic from their plants, and embargoes encountered at those ports. There is no evidence that such situations have existed or are now present at the southern tier ports. To the extent that they may exist, particularly where they result in inferior service at those ports, they would supply a strong incentive, in the event of rate equalization, for a shift in tonnage to the northern tier ports, especially New York. An Ohio manufacturer of rolling mill machinery, presses, and similar articles which exports about 20 million pounds annually presently uses New York, under protest, for 75 percent of its shipments because of conditions [fol. 4951] of letters of credit used by its customers which require use of that port.

Effect of Rate Parity.—Baltimore interests contend that with rate parity that port would lose a large part of its general cargo. They rely on the detailed evidence of New York's superior steamship service and port services and facilities, which the record shows attract substantial traffic through New York en route to or from areas in which the southern tier ports are located, although the rail rates to New York in most instances exceed those to the southern tier ports. As indicating the force of these attractions they point out that as to traffic to and from affected territory the bulk of the general cargo moves through New York despite the differentials; that much traffic to and from New England, including the area near Boston, flows through New York on rates as much as 52 cents higher than to Boston; and as to affected territory traffic on which those ports have a parity of rates, Boston, except for some grain, attracts little tonnage; that although Albany has the Philadelphia basis of rates, except for some grain moving through privately owned elevators, export-import traffic moves past it to New York; and that Portland's traffic to and from that territory, other than grain, is limited to two import commodities on which the Baltimore basis of rates applies.

As to bulk commodities Baltimore contends that the effect of the loss of the differential will be less immediate but equally certain. Its excellent facilities for handling this traffic were developed primarily by the railroads in reliance on their use by exporters of grain and importers [fol. 4952] of ore, because of the saving in inland freight. As bulk commodities, because of their low value are peculiarly sensitive to transportation cost, the differential has greater influence on their movement than on general cargo. This movement is generally in regularly scheduled vessels, at equalized ocean rates, and in shipper owned vessels. The variety of general cargo concentrated in New York has drawn such vessels to that port. With further concentration of such cargo resulting from rate parity, the steamship lines would use their influence to attract more bulk cargo to provide balanced ladings at that ports, with resulting diversion of such cargo on which Baltimore is heavily dependent.

About 90 percent of Baltimore's water-borne commerce consists of bulk commodities such as ores, petroleum, raw sugar, and gypsum rock and grain. It is interested in increasing its volume of general cargo so that it will attract more liner type vessels, and provide a better balance of tonnage and greater revenue for the port. The general cargo moving by rail to and from affected territory in 1955 which aggregated about 1.1 million tons was only about one-fourth of the domestic and foreign general cargo passing through the port. It has had difficulty even with a rate advantage in building up its foreign trade of this type. It fears that the volume will diminish with resulting curtailment of steamship service if New York were accorded a parity of rates with the southern tier ports. If much of this traffic were lost, because of rate parity, and the St. Lawrence Seaway diverts a substantial part of its bulk cargo tonnage, it fears that its port revenues and employ- [fol. 4953] ment in the port area would suffer. Although the competition of the Seaway, especially for export grain, is relied upon by the respondents and the authority to support equalization, Baltimore emphasizes that since bulk commodities are estimated to provide 80 percent of the seaway traffic, New York predominantly a general-cargo

port, would be affected much less than Baltimore, which is primarily a bulk cargo port.

Shipper evidence presented by protestants shows a decided preference for the port of New York. A number of manufacturers of a variety of products at points in Maryland in or near Baltimore make a substantial portion of their export shipments through New York, in some instances as high as 95 percent. Most of these move by truck at rates much higher than to Baltimore, generally at the direction of the foreign purchaser or a foreign freight forwarder at New York whom he designates, of brokers at New York, of the domestic corporations who consolidate the shipments at the port for movement to their foreign bases, or of the United States Government when it controls the transportation. The more important factors that influence the use of New York are the more frequent sailings and more adequate foreign port coverage than from Baltimore. The truck as well as rail rates to New York are substantially higher than those to Baltimore by as much as 79 cents.

A freight forwarder at Baltimore who specializes in moving export shipments, providing a carloading service from differential territory, and who is the only forwarder loading regularly scheduled export cars to Baltimore loads such [fol. 4954] cars at Chicago, Indianapolis, Ind., and three Ohio cities. Similar service is provided by other forwarders to other ports including New York and New Orleans, La. In 1951, its first year of operation, with rates three cents less than those of the forwarders loading for New York, it loaded only 40 cars. Although it did not apply the general increases authorized in Ex Parte No. 175 and its fourth-class rates are now about 10 percent lower than those to New York, despite this incentive far fewer cars of forwarder traffic for export move to Baltimore than to New York. During the test year such shipments totaled 5,242 tons, or slightly more than 1/10 of the volume to New York. In its solicitation of this traffic shippers give numerous reasons for preferring New York, the chief of which is the advantage of more frequent direct sailings to more foreign ports, or the directions of their customers who maintain export offices in New York from which they can

best control the movement of the freight and its consolidation at the port. Unless it can continue to offer the saving which the present rates to Baltimore afford the shipper, it believes it will be impossible to obtain sufficient traffic to load cars for Baltimore and that it would be compelled to obtain authority to operate to New York or retire from the business.

Other evidence of shipper preference for New York.— As indicative of the force of the influences which impel the use of the port of New York protestant railroads show that a substantial part of the traffic which flows through that port either has its origin or destination in areas where the competing ports are located, or moves through or passes [fol. 4955] such ports en route to or from New York. For example, in 1955 and 1956 about 1,500 carloads of a wide variety of articles imported at New York moved over their rails to Philadelphia and Baltimore. In those years exports consisting of 863 carloads moved from Philadelphia, and 1,722 carloads, about 900 of which were manufactured iron and steel, moved from Baltimore by rail to New York. In the same years numerous carloads of various raw materials and manufactured articles were imported through New York and moved from that port by rail through Philadelphia and Baltimore to points such as Durham, N. C., Jacksonville, Fla., Roanoke and Richmond, Va., Atlanta, Ga., Decatur, Ala., and New Orleans. Included therein were 647 carloads of leaf tobacco moved from New York to Durham, and 139 carloads of coffee to Washington, D. C. Similarly a wide variety of exports moved by rail from the same points or areas to New York. The rates to or from New York were the same in a few instances as the corresponding rates to or from Baltimore, but generally they exceeded the Baltimore rates by amounts far greater than the 3-cent differential.

In this connection protestants direct attention to evidence presented by the port of Boston showing that New England manufacturers used Boston for a small minority of their foreign shipments, although rail or truck rates to that port were in most instances less than to New York. In 1948, 172 such firms routed 81 percent of their export shipments to

New York and only 11.5 percent through Boston. A survey in 1956 disclosed similar preference for ports other than Boston, chiefly because of lack of or too infrequent steamship service from that port.

[fol. 4956] Truckload rates from the affected territory on numerous articles exported or imported through north Atlantic ports do not reflect recognized differentials as do the rail rates. The differences in such rates to or from these ports are greater than the differentials in the corresponding rail rates. For example commodity truck rates on brass or copper ingots to Cleveland, Ohio, are 85 cents from Baltimore, 88 cents from Philadelphia, and 93 cents from New York.

To show that New York's competitive position is far superior to that of Hampton Roads a study was made by the Chesapeake and Ohio for the year July 1956 to June 1957 which disclosed that substantial tonnages from affected territory moved to New York notwithstanding the lower rates favorable to the southern tier ports. For example, of 5,870 cars originated by the Chesapeake and Ohio in that territory during this period, and exported either through Hampton Roads or New York, 4,654 cars were exported through New York. Thus notwithstanding its 3-cent differential advantage this carrier was able to hold only one out of five cars which it originated. The cars lost to the New York Central represented about 20 percent of all carload traffic handled by the Hampton Roads lines from differential territory for export through that port. During the same period the Chesapeake and Ohio, as an intermediate carrier, handled 1,007 cars from affected territory which it delivered to connections for export through New York. Furthermore, it can attract relatively little off-line traffic through its port. In the same period it handled for export through Hampton Roads only 561 cars originated [fol. 4957] by the New York Central and 40 cars originated by the Erie which were turned over to it by those respondents.

To ascertain the effect of the 3-cent differential a study was made of manufactured iron and steel traffic from the Pittsburgh district, from which the rates to New York and

Hampton Roads are the same since Pittsburgh is not in affected territory as to traffic to Hampton Roads. During August and October 1955 and April, May, and June 1956, 178,241 tons moved from that district through New York by five respondent railroads, but only 545 tons moved through Newport News. During the test year the movement to New York of this commodity was 580,073 tons or over 100 times the volume handled through Hampton Roads and over 60 percent more than through Baltimore.

A parity of rates to Hampton Roads and New York also obtains on export traffic from the Province of Ontario, Canada, served by the Chesapeake and Ohio and New York Central. In the year ending in June 1957 only 14 cars moved through Hampton Roads from origins on the Chesapeake and Ohio in that Province, compared with 553 cars from those origins to New York. The Chesapeake and Ohio was unable to attract a single car which the New York Central originated in that territory for movement to Newport News.

A meat packer who operates plants at Madison and Davenport exports lard, pork and pork products over routes through Chicago and the North Atlantic ports in competition with other slaughterers at Chicago, St. Louis, East St. Louis, Ill., and Milwaukee. No reductions are pro- [fol. 4958] posed in the rates from Madison or Davenport. As it must absorb the difference in rates from its plants over those from Chicago, in making such export sales, it objects to the large increase in the rate spreads, in some instances more than doubled, which would result from the proposed reductions from Chicago, contending that this works undue prejudice to it. It states that unless these excessive spreads are adjusted its only alternative will be to move more of its export traffic through Gulf ports. It asks that respondents be required to maintain present spreads as a condition to the establishment of the proposed rates.

Discussion and Conclusions

The port rates proposed to be reduced are part of a rate structure established by voluntary agreement of the eastern railroads more than eighty years ago. As was said in pre-

scribing the reasonable and nonprejudicial port rates to and from Albany in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co., supra*, this adjustment was not a loose aggregation of separately established rates, but a single entity composed of interrelated rates bound together by the port differentials. To the extent that these differentials are effective in influencing the movement of traffic through particular ports their impact is registered in the tangible evidence of the tonnage data. But as such data also reflect the influence of numerous other factors, including the rail service, the various port services and the ocean service beyond, which may counteract or supplement the effect of the differentials, the complexity inherent in measuring or evaluating their impact is apparent. However, it is equally apparent that as the influence of all these factors [fol. 4959] has already been thus registered, a change in the differential is very likely to cause a shift in the traffic, except where some countervailing influence intervenes.

Some of the ports involved have at various times sought to alter the differentials but prior to this proceeding no carrier or group of carriers has done so. While circumstances which warrant or require some modification thereof may arise the burden of showing such facts and the need for the change in relationships rests upon the proponents of such action. Of controlling importance in this connection are the provisions of section 1, relating to the reasonableness of the proposed relationships, and those of section 3(1) which relates specifically to undue preference or advantage of ports or port districts. Also to be considered is section 15a(2) which requires the Commission to consider the effect of rates on the movement of traffic.

The evidence upon which respondents rely is not convincing that their proposed rates are necessary to afford them and the northern tier ports an opportunity to compete for the subject traffic. On the contrary the record shows that New York continues to attract more of the highly desirable general cargo tonnage so vital to its port economy than all of the other north Atlantic ports combined; that to obtain a volume of traffic which will support even a much lower level of port activity and range of shipping services than New York the southern tier ports

have been depending heavily on bulk cargo tonnage; and that, considering the volume and character of the traffic [fol. 4960] disclosed by the traffic study, undue diversion of the subject traffic from those ports to New York would result from the proposed equalization. The comprehensive showing in that study strongly refutes the claims of respondents and their supporting port interests that such equalization is required to enable them to meet the competition of the southern tier ports and to effect a reasonable and nonpreferential rate relationship as between the opposing groups of ports.

The Commission should find: (1) That respondents have not shown that their proposed rates would be just and reasonable; (2) that they have not shown that they would be reasonably related to those on like traffic between the same interior points and the southern tier ports; and (3) that their proposed rates would result in undue preference and advantage of the northern tier ports, particularly New York, and undue prejudice and disadvantage to the southern tier ports.

The Commission should further find that protestant railroads' proposed rates are not shown to be just and reasonable.

The application for relief from the provisions of section 4 of the act should be denied.

Appropriate orders should be entered.

[fol. 4961]

APPENDICES A TO F

(See opposite) ☞

APPENDIX A

Comparison of waterborne Foreign Commerce through United States and North Atlantic Ports, with that through New York.

(Millions of Net Tons)

	1935	Percent of U.S.	1946	Percent of U.S.	1955	Percent of U.S.
Imports	38.7		52.1		153.	
Exports	43.0		96.8		118.1	
Total	81.7		148.9		271.1	
North Atlantic, Total	35.0	42.8	69.9	46.9	158.1	58.3
New York	17.4	21.2	22.8	15.3	38.9	14.4
New York, % of N.A.	49.7		32.6		24.6	
Imports (excluding petroleum and ores)	26.5		28.4		33.8	
Exports (excluding coal and grain)	33.3		51.2		52.4	
Total	59.8	100.0	79.6	100.0	86.2	100.0
North Atlantic, Total	23.8	40.0	24.5	30.8	29.2	33.9
New York, Total	12.8	21.3	14.4	18.1	16.6	19.3
New York, percent of N.A.	53.7		58.7		56.9[1]	

[1]Percentage of North Atlantic general cargo exports and imports increased from 58.7 percent in 1955 to 59.1 percent in 1956. (Ex 102) p. 19.

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APPENDIX B

Ocean Borne General Cargo, 1956
Long Tons (Thousands)

	Exports	Imports
North Atlantic:		
New York	6,397	6,495
Other North Atlantic	4,007	4,918
Total	10,404	11,413
South Atlantic:		
North Carolina	219	82
South Carolina	432	241
Georgia	441	365
Florida	995	1,360
Total	2,088	2,048
Gulf:		
Mobile	602	355
New Orleans	3,308	2,693
Sabine	885	87
Galveston	2,651	1,158
Laredo	409	30
Total	7,855	4,323
Pacific Coast:	4,870	3,865
Other	1,770	1,101
Total, United States	26,987	22,750

[fol. 4962]

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APPENDIX C

Exports, Excluding Coal and Grain
(Millions of Net Tons)

	U.S. Ports	N.A. Ports	North Atlantic Ports					
			New York		Northern Tier		Southern Tier	
	Tons	Tons	Tons	% of N.A.	Tons	% of N.A.	Tons	% of N.A.
1923	(1)	12.9	9.2	72	9.5	74	3.4	26
1946	51.2	14.5	8.5	59	8.9	61	5.6	39
1955	52.4	14.1	8.2	58	8.8	62	5.3	38

Imports, Excluding Petroleum and Iron Ore
(Millions of Net Tons)

1923	(2)	15.4	8.8	57	11.1	72	4.3	28
1946	28.4	12.8	6.2	49	7.4	58	5.3	42
1955	33.8	20.3	9.4	46	11.2	55	9.0	45

(1) 42.3 million tons in 1930.

(2) 26.6 million tons in 1930.

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[fol. 4963]

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APPENDIX D

Ocean-borne Exports
(Millions of Long Tons)

	United States		New York Custom District		
	Total	General Cargo	Total	General Cargo	% of U.S. General Cargo
1923	40.7	21.7	11.1	7.9	36.3
1946	64.2	26.2	11.9	9.9	37.7
1947	91.1	28.8	14.3	10.9	38.0
1948	66.8	22.0	11.4	8.1	36.8
1949	58.8	20.8	9.1	7.0	33.7
1950	39.1	17.0	6.6	5.1	29.9
1951	87.3	20.0	9.7	6.3	31.3
1952	76.1	18.1	7.8	5.7	31.7
1953	57.1	15.3	6.6	4.8	31.1
1954	57.0	18.4	6.6	4.9	26.8
1955	84.6	23.8	8.4	6.4	26.8
1956	113.0[1]	27.0	8.7	6.4	23.7

Ocean-borne Imports
(Millions of Long Tons)

	United States		New York Custom District		
	Total	General Cargo	Total	General Cargo	% of U.S. General Cargo
1923	38.4	17.8	11.6	8.0	45.
1946	44.2	13.6	13.7	5.2	38.2
1947	51.2	14.3	14.5	5.1	35.3
1948	60.8	16.3	17.8	6.2	38.2
1949	58.9	16.7	18.3	5.8	34.6
1950	86.1	21.4	23.0	7.6	35.5
1951	91.0	20.7	22.8	7.1	34.5
1952	97.0	19.5	25.1	6.9	35.6
1953	108.0	21.2	26.2	7.3	34.4
1954	110.7	19.4	25.4	5.8	30.0
1955	130.2	22.3	27.3	6.4	28.6
1956	146.8[2]	22.8	27.5	6.5	28.5

[1]The increase in total exports of about 72 million tons since 1923 distributed roughly was as follows (in millions of tons): Coal 42; grain 14; tanker cargo (petroleum, coal tar products, and molasses) 4; other minerals (sulphur, phosphate, iron ore) 4; foreign aid 3; and general cargo 5. (JG 16-X7).

[2]The increase in total United States imports of 108 million tons since 1923, consisted of the following (in millions of tons): Tanker cargo (mainly residual fuel oil) 66; bulk ores (iron, manganese, chrome, ilmenite, bauxite, copper, lead) 31; other minerals (clays, gypsum, nitrates), 3; and general cargo, 5. (JG 16-X9).

4964

[fol. 4964]

3734

APPENDIX E

Rail Transportation of Foreign Commerce Between
U.S. North Atlantic Ports and Affected Territory.

August 1955 - July 1956

	Northern Tier		Southern Tier	
IMPORTS	(Net tons)	Percent	(Net tons)	Percent
Products of Agriculture	225,188	33.3	84,268	4.0
Animals and Products	19,597	2.9	4,873	0.3
Products of Mines[1]	41,331	6.1	1,622,761	76.5
Products of Forests	13,100	1.9	41,570	1.9
Manufactures & Miscellaneous	376,672	55.6	368,350	17.3
Forwarder Traffic	130	0.2		
Total Carload Traffic	676,456	100.0	2,121,822	100.0
Percent of North Atlantic	24.2 (52.9)[2]		75.8 (47.1)[2]	

[1]Exclusive of petroleum and iron ore and concentrates.

[2]Exclusive of bulk ores.

EXPORTS				
Products of Agriculture	868,000	29.3	3,993,051	59.5
Animals and Products	124,182	4.2	87,524	2.6
Products of Mines[3]	4,582	0.1	19,213	0.3
Products of Forests	3,310	0.1	2,605	0.1
Manufactures & Miscellaneous	1,913,481	64.6	1,099,690	36.8
Forwarder Traffic	50,599	1.7	5,242	0.7
Total Carload Traffic	2,964,154	100.0	5,207,325	100.0
Percent of North Atlantic	36.3 (62.7)[4]		63.7 (37.3)[4]	

[3]Exclusive of coal.

[4]Exclusive of grain.

4965

[fol. 4965]

3735

APPENDIX F

Rail Transportation of Exports from Affected Territory (1955-56)

To	Total (net tons)	Total Percent of N.A.	Grain (net tons)	Grain Percent of N.A.	Other Traffic (net tons)	Other Traffic Percent of N.A.
New York						
Respondents	1,642,349		154,125		1,488,224	
Protestants	750,696		49,869		0,827	
	2,393,045	29.3	203,994	4.4	2,189,051	62.7
Boston	361,772	4.4	358,516	7.7	3,256	.1
Portland	68,192	.8	68,192	1.5	None	
Albany	141,145	1.7	141,000	3.0	145	.0
Total, northern tier	2,964,154	36.3	771,702	16.6	2,192,452	62.8
Baltimore	3,303,499	40.4	2,339,309	50.	964,190	27.6
Philadelphia	854,809	10.6	705,578	15.1	149,231	4.3
Hampton Roads	1,049,017	12.9	859,191	18.4	189,826	5.4
Total, southern tier	5,207,325	63.7	3,904,078	83.5	1,303,247	37.3
		100		100		100

Rail Transportation of Imports from Affected Territory (1955-56)

From	Total (net tons)	Bulk Ores[1] (net tons)	Other Traffic (net tons)
New York			
Respondents	391,979	27,970	364,189
Protestants	253,813	2,182	251,633
	645,792	29,972	615,820
Boston	17,739	None	17,739
Portland	12,382	None	12,382
Albany	543	None	543
Total, northern tier	676,456	29,972	646,484
Baltimore	1,644,844	1,349,946	294,898
Philadelphia	184,759	59,490	125,269
Hampton Roads	292,219	136,046	156,173
Total, southern tier	2,121,822	1,545,482	576,340

From	Total Percent of N.A.	Bulk Ores[1] Percent of N.A.	Other Traffic Percent of N.A.
New York			
Respondents			
Protestants			
	23.1	1.9	50.4
Boston	0.6		1.5
Portland	0.4		1.0
Albany	0.1		
Total, northern tier	24.2	1.9	52.9
Baltimore	58.8	85.1	24.1
Philadelphia	6.6	3.8	10.25
Hampton Roads	10.4	8.6	12.8
Total, southern tier	75.8	98.1	47.1
	100	100	100

[1]Other than iron ore and concentrates.

4966

[fol. 4966]

[fol. 4967]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

ORDER ALLOWING PETITION OF MASSACHUSETTS PORT AUTHORITY THAT IT BE SUBSTITUTED FOR THE PORT OF BOSTON COMMISSION, INTERVENER—October 21, 1959

Present: Anthony F. Arpaia, Acting Chairman, to whom the matter which is the subject of this order has been referred for action thereon.

Upon consideration of the record in the above-entitled proceedings, and of a petition of the Massachusetts Port Authority that it be substituted for the Port of Boston Commission, as an intervener; and for good cause appearing:

It is ordered, That the Massachusetts Port Authority be, and it is hereby, substituted as intervener in the above-numbered proceedings in place of Port of Boston Commission.

It is further ordered, That a copy of this order be served upon each of the parties to these proceedings.

Dated at Washington, D. C., this 21st day of October, A. D., 1959.

By the Commission, Acting Chairman Arpaia.

Harold D. McCoy, Secretary.

[fol. 4968]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615[1]

Equalization of Rates at North Atlantic Ports

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1. Schedules of proposed reduced class and commodity rates on export and import traffic between interior points in differential territory and New York and Albany, N. Y., Boston, Mass., and Portland, Maine, affecting their relation to the present rates on like traffic to and from Baltimore, Md., Philadelphia, Pa., and Norfolk and Newport News, Va., found not shown to be just and reasonable, and to result in undue prejudice and preference as between the ports named.

2. Schedules of proposed reduced rates on like traffic between the same interior points and the ports last named, found not shown to be just and reasonable.

3. Schedules ordered canceled, and fourth-section application denied.

J. H. Colgren, R. E. Costello, J. F. Reilly, R. G. Bleakney, Jr., M. R. Warnock, J. T. Clark, B. Hulkhower, W. Q. Keenan, N. J. Holland, J. W. Grady, G. J. Schwarz, and S. W. Scully for respondents.

S. Goldstein, F. A. Mulhern, E. K. Laux, A. L. Winn, Jr., S. H. Moerman, J. S. Payne, W. J. Myskowski, C. H. Tenney, S. Mandell, S. Brandes, L. J. Lefkowitz, P. Blair, D. F. Tynan, J. B. MacDonald, A. C. Welsh, C. W. Merritt, P. C. Brown, J. J. Thornton, J. F. Toppeta, H. E. Foley, G. Waldstein, G. E. Pratt, D. E. Pinsky, J. T. Ryan, R. G. Curry, F. M. Dolan, M. D. Miller, J. H. Macomber, Jr., F. W. Denniston, A. G. Brand, L. B. Hillsinger, C. W. Bucy, E. L. Saunders, L. M. Shinn, J. L. Pease, J. S. Chartrand, and W. B. Grimes in support of respondents.

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[1] This report embraces also Fourth-Section Application No. 32204, Import and Export Rates from and to North Atlantic ports.

J. Langdon, Jr., R. R. Bongartz, C. J. Henry, Jr., J. S. Shannon, R. B. Claytor, J. W. Hanifin, H. Biaett, M. A. Meyer, Jr., W. J. Taylor, A. W. Hesse, Jr., R. J. Gunning, J. H. Lewin, W. C. Purnell, and W. P. Quinn for protestant railroads.

D. Macleay, W. Price, Jr., M. Duane, F. W. Sullivan, B. A. Wallace, D. Berger, A. M. Ruben, W. C. Burt, R. M. Beckman, H. L. Walker, P. G. Kraemer, C. R. Seal, H. E. Ketner, C. McD. Gillan, W. L. Marbury, J. M. Jones, Jr. and H. E. Mesirow for other protestants.

W. H. Wagner for an interested shipper.

REPORT OF THE COMMISSION—Decided December 5, 1960

By the Commission:

Exceptions to the examiner's proposed report were filed by the respondents and port interests of New York and [fol. 4969] Boston, and the protestants and the several port interests supporting them replied. We have heard the parties in oral argument. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

By schedules filed to become effective on July 10, 1956, and later dates, railroads which serve the ports of New York and Albany, N. Y., Boston, Mass., and Portland, Maine (except as hereinafter indicated), and connecting railroads, herein referred to as the respondents, proposed to reduce the rates[2] on export and import traffic, except iron ore, coal, and coke which is the direct product of coal, between those ports, herein referred to as the northern tier ports, and points in the interior in an area on and north of the Ohio River, generally west of the Buffalo, N. Y.-Pittsburgh, Pa., line, and extending to the Mississippi River. The purpose of the proposal is to equalize the rates, on the Baltimore, Md., basis of rates, on such traffic to and from those ports with the rates on like traffic to and from the ports of Philadelphia, Pa., Baltimore, and the Hampton Roads ports in Virginia, herein called the

[2] Rates and differences in rates are stated per 100 pounds, except as otherwise indicated.

southern tier ports, and thus abolish the so-called port differentials which have obtained in connection with these rates for many years.

By schedules filed to become effective simultaneously with those of the respondents, certain railroads which serve the southern tier ports, some of which also serve New York, for convenience herein referred to as the protestants, proposed to reduce the rates between the southern tier ports and the same interior territory, except as hereinafter described, by the same amounts, and to reduce their rates to and from New York by the same amounts as proposed by their competitors, the respondents. This counter proposal, in the event that the respondents' proposed rates [fol. 4970] were found lawful, would restore the present differentials, thus maintaining the long-standing port relationships, but upon a lower level of rates.

Upon protests of certain of each group of railroads, the one opposing and the other favoring equalization of the ports, and the several port interests and other parties supporting their respective positions, the operation of the proposed schedules was suspended until February 9, 1957, and the proponents of the schedules have voluntarily deferred their operation until the disposition of this proceeding. Certain, but not all, connecting railroads which participate in the rates to both the northern and southern tier ports, in order to remain competitive, joined in the respective suspended schedules.

By fourth-section application No. 32204, filed concurrently with the proposed schedules and heard in connection with the title proceeding, the respondents seek authority to establish and maintain the proposed rates over their lines without observing the long-and-short-haul provisions of section 4 of the Interstate Commerce Act.

The territory to and from which equalization of the northern tier ports with Baltimore is initially proposed is roughly that represented by central freight association territory, including Illinois freight association territory and southern Wisconsin, hereinafter called the affected or differential territory. It includes territory on and west of a line extending from a point just west of Buffalo through

Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof, certain points in Kentucky on the lines of The Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio.

[fol. 4971] Some of the western railroads serving points in northern Illinois, Mississippi River cities, and Wisconsin did not join in the proposed equalization. Thus, if the respondents' proposal became effective, it would cause an increase in the present rate spreads from such points as Davenport, Iowa, and Madison, Wis., over Chicago, Ill., mentioned later herein.

Equalization is proposed only in connection with import and export rates published as such. Eventually it is intended to effect equalization as to all territory to and from which the recognized port differentials have been maintained and as to all export and import traffic, irrespective of the type of rate on which it moves. The protestants are apprehensive of the widespread collateral effects of the equalization of rates on such traffic, including traffic moving on combination rates; also the rates on coastwise and intercoastal traffic, and the domestic rates to and from the ports. There are numerous unrestricted domestic commodity rates to and from the north Atlantic ports which reflect the port differentials and under which there is a substantial movement of export-import traffic.

Differential rates on export-import traffic between the Hampton Roads ports and the interior apply only from and to the portion of differential territory which lies west of the line of The Baltimore and Ohio Railroad Company through Sandusky, Mansfield, Newark, Zanesville, and Marietta, Ohio, thence the Ohio River to Kenova, including points on the lines of the Chesapeake & Ohio and The New York Central Railroad Company in the portion of West Virginia which lies in central territory.

The recognized differences in the present rail rates on import and export traffic, commonly known as the port differentials, including those at Canadian north Atlantic ports, are shown below:

[fol. 4972]

Import traffic

Port	Differentials, in cents per 100 pounds					
Classes	1	2	3	4	5	6
Canadian ports (Same as Baltimore)						
Portland (Baltimore rates via Canadian routes; New York rates via standard routes)						
Boston (Same as New York)						
Albany (Philadelphia rates, subject to domestic rates as maxima)						
Philadelphia under New York	6	6	2	2	2	2
Baltimore under New York	8	8	3	3	3	3
Hampton Roads (1) (Same as Baltimore)						

Export traffic

Canadian ports— Halifax, St. John, etc. (Same as New York)						
Montreal (Same as Philadelphia)						
Portland						
Boston (Same as New York)						
Albany (Philadelphia rates, subject to domestic rates as maxima)						
Philadelphia under New York	2	2	2	2	2	2

Grain, 0.5 cent under New York
Flour, 1 cent under New York

Baltimore under New York	3	3	3	3	3	3
Grain, 1.5 cents under New York						
Flour, 2 cents under New York						
Hampton Roads (2)						
(Same as Baltimore)						

(1) To territory west of the Sandusky, Mansfield, Zanesville, Marietta line.
(2) From territory west of the Sandusky, Mansfield, Zanesville, Marietta line.

[fol. 4973] On commodity rates, other than on export grain and flour, the same differentials are generally maintained as on class rates.[3] Thus, it will be observed that, except as to the export rates on grain and flour and as to imports moving on first-class or second-class rates, the present recognized differential is 3 cents, Baltimore and Hampton Roads under New York.

In applying the general increases in rates, usually in percentage form, which we have authorized since World War II, the railroads were admonished to restore these differentials. This was done quite promptly on grain and a few other commodities. However, there were extended periods, as much as 3 to 5 years, when, because of extenuating circumstances, rate relationships generally more favorable to the southern tier ports than those reflected by the normal differentials prevailed, thus disturbing the channels of trade. The differentials, normally 3 cents were in numerous instances as much as 5 cents. These disruptions had not been corrected at the time of the traffic study, hereinafter described. Prompt restoration of the differentials was required in *Increased Freight Rates, Eastern, Western and Southern Territories, 1956*, 300 I.C.C. 633, 682-684, decided August 6, 1957.

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[3] The rates on import iron ore from Baltimore and Philadelphia to the Pittsburgh area have been on a parity for over 50 years. See *Iron Ore From Eastern Ports to C.F.A. Points*, 291 I.C.C. 527, 536.

Where class rates apply on this traffic, they are the old docket 15379 rates to and from Baltimore, with those to and from ports north thereof reflecting the above-indicated differentials, except as altered by the disruptions. For example, the class 27.5 import rates to Chicago, including the Ex Parte No. 196 increases, are 96 cents from Boston and New York and 92 cents from Baltimore, as compared with the docket 28300 domestic class rates of 114, 108, and 101 cents, respectively. Under respondents' proposal the 96-cent rate would become 92 cents.

[fol. 4974] Typical present rates (exclusive of increases authorized in Ex Parte No. 212) are as follows: On imports, in carloads, from New York, 152 cents on bananas to Detroit, Mich.; 169 cents on machinery, n.o.i.b.n., to St. Louis, Mo.; 91 cents on crude rubber to Akron, Ohio; 48 cents on ball or china clay to Erie, Pa.; and 671 cents per gross ton on chrome ore to Marietta, Ohio. On exports, in carloads, to New York, 269 cents on automobiles from Flint, Mich.; 114 cents on glass containers from East St. Louis, Ill.; 34 cents (proportional) on wheat from Chicago; 48 cents on manufactured iron and steel articles from Pittsburgh; 112 cents on packinghouse products from Chicago; and 96 cents on tractors from Peoria, Ill. Except on grain, the corresponding Baltimore rates are 3 cents (60 cents when the rates are published per ton) lower than those shown.

Except for the disruption occasioned by the general increases, above mentioned, and which was subsequently corrected, no increase has been made in the differentials which favor the southern tier ports for over 80 years. But the increase in rate level which occurred over those years has proportionately decreased their significance. For example, the sixth-class rates between Chicago and New York-Baltimore were 25 cents and 22 cents from 1877 to 1914. If the increases since authorized, through Ex Parte No. 206, had been applied to those rates they would now be 115 cents and 99 cents, respectively, and would reflect a differential of 16 cents. The increased value of goods has likewise diminished the relative significance of the differential.

When the present differentials were established there were higher ocean rates to and from Baltimore and Phila-

delphia than to and from the northern tier ports. The differentials were designed, and their effect was, to compensate for the differences in these ocean rates in favor of the northern tier ports. Thus, they tended to produce equal [fol. 4975] total transportation charges between an interior point and the foreign origin or destination over all routes through the several ports, affording the different railroads and ports competitive rates.

Beginning in the early twenties and extending to about 1935, the ocean rates to and from the different ports were equalized. Consequently, the sum of the rail and ocean transportation charges through the northern tier ports served by the respondents became higher than the sum of those charges through the southern tier ports served by the protestants, by the amounts of the above differentials. The respondents and those supporting them here contend that as a result the northern tier ports cannot effectively compete for the traffic, and their share thereof has become actually and relatively less while the southern tier ports have increased their share of the total foreign trade through the north Atlantic ports. The evidence relied upon to support these claims is hereinafter discussed.

The respondents' proposal to abolish the differentials, if made effective, would generally provide an equality of aggregate transportation charges, rail and ocean, between foreign countries and points in the affected territory for the whole range of north Atlantic ports, including Albany. As the respondents do not serve Philadelphia, their proposal to equalize the northern tier ports with Baltimore, if found lawful, presumably would require that the Philadelphia rates also be reduced to the Baltimore basis.

In addition to the respondents, those presenting evidence in support of the proposed equalization include the City of New York, the State of New York, the Port of New York Authority, herein called the Authority, the Port of Boston Commission, The Greater Boston Chamber of Commerce, The Chamber of Commerce of the State of New York, The Brooklyn Chamber of Commerce, the Albany Port District [fol. 4976] Commission, the United States Department of Agriculture, General Services Administration, the Board of Trade of the City of Chicago, and numerous trade and

traffic associations in the New York and northern New Jersey port area.

The protestant railroads which urge continuation of the differentials are supported by the Maryland Port Authority, the Virginia State Ports Authority, the Delaware River Port Authority, the City of Philadelphia, the Baltimore Association of Commerce, and the Chamber of Commerce of Greater Philadelphia.

The present differentials, except for brief periods of disagreement between the carriers during the 80's, have been in effct since 1877[4] as the result of an agreement entered into by four north Atlantic port railroads, which had two objectives: To avoid misunderstanding as to the geographical advantages or disadvantages of New York, Philadelphia, and Baltimore as affected by railroad-ocean transportation, and to effect an equalization of rail-ocean transportation cost between interior points and foreign ports reached through those cities. It provided also that rates to and from Boston should be no less than those to and from New York. In 1882, the differentials agreed upon were the subject of an investigation made at the request of the principal terminal railroads serving those ports, conducted by the Thurman-Cooley-Washburn Advisory Commission. It concerned the differentials on domestic as well as foreign traffic. In its report therein, the so-called Cooley award, that Commission concluded that the then-existing differentials should not be disturbed. The respondents introduced that report in evidence, and direct particular attention to the following paragraph thereof:

> [fol. 4977] But we do not assume that the rates which are just today will be just indefinitely. They have become established by the force of circumstances and they ought to give way if future circumstances shall be such as to render it right and proper. They constitute a temporary arrangement only; equitable as we think for the present, but which may become inequitable before the lapse of any considerable time.

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[4] So-called "split" differentials, one-half the standard differentials, were established on grain in 1899. See *In the Matter of Differential Rates*, 11 I.C.C. 13, 20.

> Whenever they shall be found to operate unfairly and to give a force or unnatural direction to trade and whenever it shall appear that they tend to deprive any of the seaports affected by them of the proportion of business that would naturally come to it under the operation of normal competition, the want of equity in the rates will appear and it will be right to modify or perhaps abolish them.

Of the three principles referred to in that report, mentioned variously by the parties as controlling these port relationships; that is, the distance principle, the cost principle, and the "competitive" principle, the last named was found to be the true one and was qualified only to the extent that it should operate in an atmosphere of controlled rate stability rather than of uninhibited rate cutting and competitive strife, the objective being the preservation and promotion of the prosperity of the several ports, not only from the standpoint of their local interests but in the interest and welfare of the people of the nation as a whole. This principle of "competitive opportunity", stated by Albert Fink, Commissioner of the trunk lines, to whom the subject of differential rates had been referred, in his report of December 1, 1881, appears to have been the norm used in testing the soundness of the differentials from their inception.[5] Thus, the advisory commission concluded that the differential rates reflected and were subordinate to that principle, by the operation of which they had come into existence, and that under the circumstances then existing [fol. 4978] they should not be disturbed. However, it added the paragraph above quoted which the respondents, as already indicated, deem significant in its bearing upon the instant controversy.

A detailed history of the differential adjustment is contained in appendix B to the report in *Maritime Asso., ston Chamber of Commerce* v. *A. A. R. Co.*, 95 I.C.C. 539, 583. As early as 1905, and in a number of proceed-

[5] See Daish, "Atlantic Port Differentials", p. 9. The principle was recognized by the Commission in a proceeding in which the differential rates on grain and flour to New York for export, were assailed. The complaint was dismissed. See footnote 4.

ings both prior and subsequent to the equalization of the ocean rates, we considered the lawfulness of that adjustment, when assailed by one or more of the port interests, and consistently upheld it as lawful. See *Lighterage Cases*, 203 I.C.C. 481, 504. This is the first instance in which any port railroads have proposed to alter the adjustment.

In *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co.*, 219 I.C.C. 151 (1936), in which the port of Albany assailed the domestic rates, then applicable on its foreign traffic, as unreasonable and unduly prejudicial to it and unduly preferential of other north Atlantic ports, our decision, made in the light of the 1935 amendment bringing ports and port districts within the scope of section 3 of the act, prescribed reasonable rates on all port traffic between central territory and Albany on the Philadelphia basis, and required that the undue prejudice to Albany and preference of the other ports therein found be removed by establishing rates which reflected that relationship. In *Export Grain from Buffalo to New York*, 278 I.C.C. 31, 292 I.C.C. 647, we found lawful reduced rates proposed by the railroads, the respondents herein, on ex-lake grain for export from Buffalo to the northern tier ports, and which were on a parity with those to Baltimore. That adjustment is unrelated to the one here in issue. *Maritime Asso., Boston Chamber of Commerce* v. *A. A. R. Co., supra*, 126 I.C.C. 199, 208-209, 214. In a recent proceeding, import rates on iron ore from Philadelphia and New York to certain destinations in the affected territory the same as those from [fol. 4979] Baltimore, were found lawful. *Iron Ore From Eastern Ports to C.F.A. Points*, 291 I.C.C. 527, 299 I.C.C. 195 (this proceeding was reopened and is pending). The rates on import iron ore are not in issue herein.

The principal respondents are the New York Central which serves New York, Boston, and Albany; the Erie Railroad Company, The Delaware, Lackawanna and Western Railroad Company, and the Lehigh Valley Railroad Company which serve New York; The New York, New Haven and Hartford Railroad Company which serves New York and Boston; and the Boston and Maine Railroad which serves Boston and Portland. The principal protestants are the Baltimore & Ohio and The Pennsylvania

Railroad Company which serve Baltimore, Philadelphia, and New York; the Reading Company which serves Philadelphia; and the Western Maryland Railway Company which serves Baltimore. The protestants serving Hampton Roads are the Pennsylvania, the Chesapeake & Ohio, the Norfolk and Western Railway Company, and the Virginian Railway Company. Since the hearing the two last-named carriers have merged, as have the Erie and the Lackawanna.

The Maine Central Railroad Company, which also serves Portland, occupies a unique position. It reluctantly joined in the proposed reduced export rates to that port on the Baltimore basis, to avoid having the highest rates to any United States Atlantic port if the rates proposed by the other respondents were to become effective. Import rates on certain commodities from Portland to the affected territory are on the Baltimore basis and are published by the Canadian railroads, including the Grand Trunk Railway System, whose lines extend from Portland through Canada to the affected territory. The Maine Central participates in those rates, which are on the Baltimore level, differentially lower than the present rates from New York and Boston. It opposes the respondents' proposed import rates, which would eliminate the present differential.

[fol. 4980] The respondents contrast the present inequality in rail rates to and from the north Atlantic ports with adjustments of export and import rates to and from the south Atlantic and Gulf ports. The south Atlantic ports from Morehead City, N. C., to Jacksonville, Fla., and the Gulf ports are grouped as to import-export rates from and to central territory west of the lines of the Monon Railroad extending from Michigan City to Indianapolis, Ind., and of the New York Central thence to Cincinnati. Such equalization also obtains to and from a large portion of western trunkline territory. Similarly, the Gulf ports from Pensacola, Fla., to Corpus Christi, Tex., are equalized on both export and import traffic from and to portions of Illinois, Iowa, Missouri, and eastern Kansas. Between these south Atlantic and Gulf ports and certain points in the affected territory served by the eastern railroads, including the New York Central, the Pennsylvania, and the Baltimore & Ohio, the rates are generally lower than those to

and from New York. Since 1947 these railroads, in order to be in a position to compete with other lines for this traffic, have participated in such rates which are either on the Baltimore basis or lower.

The respondents' position is that, as they are faced with diminishing traffic and the differences in the ocean rates to and from the north Atlantic ports have long since disappeared, the principle of the right to compete, which permitted establishment of the equalized rates to and from the south Atlantic and Gulf ports, to the extent above indicated, should be applied to the north Atlantic ports.

Other factors threatening to affect their competitive position, and which motivated the respondents in their decision to equalize the north Atlantic port rates, were (1) the then-imminent completion of the St. Lawrence Seaway, recently opened to deep draft vessels, with its potential attraction for grain and other traffic, which they consider makes it all [fol. 4981] the more imperative that their rail rates be the same as those of the southern tier port lines in their competition for the remaining traffic and the generation of new tonnage to replace that diverted, and (2) the depletion of iron ore reserves in the upper Great Lakes region, adversely affecting the New York Central ex-lake ore traffic to the Youngstown, Ohio, and Pittsburgh areas.

Another consideration urged by the respondents is that the railroads serving the ports of Philadelphia, Baltimore, and Hampton Roads move large tonnages of export and tidewater coal to those ports, which in recent years have increased substantially and promise to continue; and that due to the geographical origin of this coal it is doubtful if much of it would be available to the ports of New York and Boston, but that such traffic affords a backbone of revenue-producing tonnage to the southern tier port roads which is important to their successful operation and prosperity, with the consequence that the conditions are now the reverse of those which induced establishment of the differentials, predicated on the concept of aiding weak or handicapped ports. The respondents argue also that the heavy importation of iron ore provides an important revenue contribution, especially to the Baltimore and Philadelphia roads. Their evidence, however, indicates wide fluctua-

tions from year to year in coal tonnage. In five of the years in the postwar decade, the volume handled through Hampton Roads was less than half that in 1955, dropping from 20 million tons in 1947 to 2 million tons in 1950. Proportionately greater fluctuations occur at Baltimore. Its volume of 11.4 million tons in 1947, the peak year, declined to 0.3 million in 1950, rose to 4 million in 1951, and dropped to 0.6 million in 1954. Imports of iron ore through Baltimore and Philadelphia in the same decade were more stable, the volume expanding quite consistently. However, the [fol. 4982] proportion of this volume which is utilized in those port areas and the extent to which the remainder contributes to railroad revenues is not disclosed. The rates on such ore to the affected territory are the subject of other pending proceedings.

The respondents contend that a change in conditions has occurred in the transportation of foreign commerce through the north Atlantic ports since the differentials were established; that following equalization of the ocean rates, completed in 1935, the higher northern tier port rates had the effect of diverting a large share of the traffic to and from the affected territory through the ports south of New York; and that the full effect of this diversion was not immediately felt, but the peacetime shipping following World War II disclosed the impact of that change, as a result of which a preference of the southern tier ports now exists. In this connection they quote from *New York Produce Exchange* v. *Baltimore & O. R. Co.*, 7 I.C.C. 612 (1898), in which it was found that disturbance of the differentials, which had then been observed for over 20 years, was not justified. However at page 620 appears this statement: "Manifestly, however, the conditions which determine the fairness of a differential are continually varying," and on page 669 it is pointed out that "actual observation of the effect of these preferences is the best if not the only means of determining their fairness * * *." They also cite *Chamber of Commerce of N. Y.* v. *N.Y.C. & H.R.R. Co.*, 24 I.C.C. 55, 57, where this Commission said, with reference to the north Atlantic port adjustment: "We are not to be understood as holding that the present rate adjustment will for all time or for any particular period of time be just and

reasonable, * * *." The respondents accept the view expressed by the Thurman Commission in 1882, reiterated in the report first cited, that the most satisfactory test of these differentials is the result of their operation. As they [fol. 4983] put it, "the crucial test for Commission consideration is the proven traffic diversion, which continues today."

The position of the Authority, in which the State of New York and the City of New York join, is that the overall decline in foreign tonnage through the port of New York in recent years indicates that the proposed reduced rates are necessary to enable the respondents to compete on more nearly equal terms with the railroads serving the southern tier ports, and that, with an equality of ocean rates, there is no competitive necessity for a rail rate differential against New York.

After the respondents had presented their evidence in chief, as provided by special rules of procedure, a petition was filed by the principal protestant railroads requesting that we institute, as part of these proceedings, an investigation into the cost of rail transportation of all export and import traffic to and from the port of New York, particularly with relation to the terminal costs of the respondent railroads at that port. In their reply the respondents urged that their proposal raised only a question of rate relationships between the north Atlantic ports and required no investigation of the level of those rates. The petition was denied on the ground, *inter alia*, that the burden of establishing the lawfulness of the proposed reduced rates to the northern tier ports rested upon the respondents.

The position of the protestants serving Baltimore and Philadelphia is (1) that the respondents have not sustained their burden of showing that the suspended rates between New York, Boston, and Albany and the affected territory would be lawful, nor that those rates from and to New York would be compensatory or competitively justified; and (2) that the southern tier ports would be seriously injured if the present differentials were abolished. They urge [fol. 4984] also that there is no justification for rates to and from Boston lower than those to and from New York.

The protestants serving the Hampton Roads ports (except the Pennsylvania) contend that no competitive need has been shown for the respondents' proposed reduced rates, and they are not shown to be just, reasonable, consistent with the national transportation policy, or otherwise lawful. Their evidence is directed almost wholly to the proposal as it relates to New York. That port, they say, is "the real competition faced by Hampton Roads."

With respect to their suspended schedules, which are in the nature of a counter proposal, the protestants are in agreement that this proceeding presents a basic issue of rate relationship between the port of New York and the southern tier ports. Accordingly, they request that this issue be decided on the present rate level so as to avoid needless sacrifice of carrier revenue, which would result in the event all of the schedules should become effective. As it is clear that the sole issue is one of lawful rate relationships, determination of that issue may appropriately be made independently of the counter proposal. In view of our conclusions herein, the evidence presented in support of the counter proposal need not be considered. See *Export Grain From Buffalo to New York,* on further hearing, *supra,* at page 658.

Excluding goods exported to Canada and Mexico, which comprise about 30 percent of all the foreign trade of the United States, the movement of United States manufactures to foreign markets has been steadily declining. The principal movement of both exports and imports is raw materials, and to a lesser extent, semifinished goods.

Ocean-borne commerce is classified into two types of cargo. By far the largest in volume is bulk cargo. It consists generally of low-value, heavy-volume raw materials which are handled at the port by mechanical facilities and [fol. 4985] provide bottom loading for ships or may move as full cargoes. The other type, called general cargo, includes principally manufactured and semimanufactured goods of relatively high value, which are usually packaged. General cargo generally constitutes the more profitable "top loading" for ships in a balanced cargo operation.

The type of traffic determines the character and to a large extent the cost of the port terminal service which the port

railroads perform in delivering traffic to or receiving traffic from the ship, although the facilities employed may vary widely depending upon the physical characteristics of the harbor used. Another important distinguishing characteristic lies in the relative commercial and economic benefits which a port derives from these different types. General cargo, which requires the performance of various and numerous services, including handling and stevedore service and the supplementary port services hereinafter described, provides greater employment and produces a far greater revenue per ton for the port community through which it moves than does bulk cargo, which is mostly handled by specialized mechanical facilities such as those used in unloading grain and coal. However, both types of cargo are considered essential to a healthy port economy.

North Atlantic port foreign commerce.—The principal exports of the United States are grain, cotton, other raw materials such as coal and phosphate, and semimanufactures. The large volume imports are chiefly crude materials, such as petroleum and ores.

Foreign trade through United States coastal ports in 1955, expressed in net tons, consisted of 144 million tons of imports and 96 million tons of exports, a total of 240 million tons, as compared with a total of 83 million tons in 1923 and 124 million tons in 1946. In 1955 the north Atlantic ports' share was 102 million tons or about 71 per-
[fol. 4986] cent of the imports, and 54 million tons or about 56 percent of the exports, as compared with 61 percent of the imports and 48 percent of the ocean-borne exports in 1923. The principal bulk cargo moving through these ports includes petroleum, ores, grain, and coal.

North Atlantic bulk cargoes.—Petroleum imports through the north Atlantic ports rose from 5.5 million tons in 1923 to 65 million tons in 1955. The preponderance of the increase was through the ports of New York and Philadelphia. Most of this traffic consists of crude petroleum which is refined near the ports, and residual fuel oil consumed on or near the seaboard, which seldom, if ever, moves by rail. Little or none of it moves to differential territory.

Importation of iron ore through the north Atlantic ports aggregated 16.8 million tons in 1955. This ore enters for the most part through Baltimore and Philadelphia, with a relatively small volume through Hampton Roads and Boston, and a negligible amount through New York. It moves to some extent in full cargoes in chartered or private vessels. The rates thereon are not here in issue.

Other imports of ores and concentrates, the rates on which are embraced herein, move in much smaller volume than iron ore. They consist chiefly of chrome, copper, aluminum, and manganese. Especially since 1946, they have moved in substantial and increasing volume, generally in bulk, but some in drums or barrels. These ores, of which 5.1 million tons were moved through north Atlantic ports in 1955 (1.5 million tons to the affected territory), enter mostly through Baltimore, Philadelphia, and New York, with much smaller but increasing volumes through Hampton Roads.

Coal, also not here concerned, with 34 million tons in 1955, is by far the chief commodity exported through the [fol. 4987] north Atlantic ports as a group. It moves generally in full cargo lots in tramp or chartered vessels. The great preponderance moves through Hampton Roads, the tonnage handled at that port increasing from 2.7 million tons in 1923 to 29.4 million tons in 1955, while that through Baltimore increased from 1.4 million to 3.7 million tons. During that period the combined volume through New York and Philadelphia was substantial only in 1945 to 1949 and in 1951 and 1952, but even in those years their aggregate volume was less than that at Baltimore. Thus, the increase in coal exports through the north Atlantic ports was most notable at Hampton Roads.

From the standpoint of volume, grain is the second most important commodity exported through these ports, increasing from 4.2 million tons in 1923 to 5.4 million tons in 1955. It is the chief export and by far the most important bulk commodity, of the tonnage moving to and from the affected territory. From 1923 to 1955 there were large increases in the tonnage to Baltimore and Hampton Roads, a lesser increase to Albany, and a decrease in the volumes through New York, Philadelphia, and Portland. The net

result was an increase from 58 to 73 percent of the north Atlantic port total for the southern tier ports, and a drop from 42 to 27 percent of that total for the northern tier ports. Grain requires special port terminal facilities and moves largely in full cargo lots. The 1955 movement was distributed as follows: Baltimore 2.3 million tons, Hampton Roads 1 million, Albany 0.8 million, Philadelphia 0.7 million, New York 0.4 million, with Boston and Portland dividing 0.2 million tons.

General participation of north Atlantic ports in foreign commerce.—A considerable portion of the tonnage data relied upon by the respondents and those supporting them relates to the trends of the several north Atlantic ports' participation in all ocean-borne foreign commerce of the United States, as distinguished from that to or from the [Vol. 4988] affected territory. These data show the volume of such commerce through each of those ports since 1923, regardless of the mode of transportation used. It is not limited to rail tonnage nor to the specific interior area with which this case is concerned. Such evidence has little or no significance as an indication of the trends which the ports have experienced with respect to the traffic here concerned.

The total of ocean-borne exports and imports combined through New York rose from 22.6 million gross tons in 1923 to 36.2 million tons in 1956, but that port's share of the total United States ocean-borne exports and imports declined from 28.6 percent to 14 percent during this period. Its share in 1935 was 26.5 percent, and in 1946 it was 23.7 percent. The greater part of the decline in its relative foreign-trade position occurred in the period following World War II.[6]

For Boston the situation as to all ocean-borne traffic is somewhat similar. Its imports increased from 2.4 million gross tons in 1946 to 5.5 million tons in 1956, a gain proportionately greater than for New York in the correspond-

[6] These data and those in appendix D hereto were reported by the Bureau of the Census. Those shown in appendix A are from "Waterborne Commerce of The United States" by the U.S. Army Corps of Engineers.

ing period. During the same years its exports increased from 395,000 tons to 952,000 tons, while New York's declined from 12 million to 8.7 million tons. The change in tonnage, in the same period, exclusive of the principal bulk commodities, for Boston and New York and for the southern tier ports, is shown in appendix C. The percentage of total United States foreign tonnage moving through Boston dropped only slightly during that decade, from 2.6 to 2.5 percent. However, while the trend of Boston's total volume of exports and imports has been upward, since 1923 its percentage share has trended down-
[fol. 4989] ward, declining from 4.7 percent in 1923 to 2.5 percent in 1956, a drop slightly less proportionately than for New York.

The share of the southern tier ports in total United States imports and exports increased from 1923 to 1956 as follows: Philadelphia from 7.9 to 15.7 percent; Baltimore from 8.4 to 10.4 percent; and Hampton Roads from 4.3 to 17.1 percent. Bulk cargo accounted for most of this increase.

Tonnage data showing the total of exports and imports through New York, as compared with the total for the United States, in the years 1923 and 1946 through 1956, are set forth in appendix D. The extent of New York's participation in exports and imports of general cargo is also shown."

Except for 19.1 million gross tons of tanker cargo imports in 1956, an increase from 2.4 million tons in 1923, the principal foreign trade of New York in 1956 was general cargo. That port compares the increases in its share in this type of cargo, 1956 over 1955, of 0.1 percent in exports and 1.9 percent in imports, with much larger percentage increases, ranging up to 37 percent for exports and 29 percent for imports, at the principal Gulf and south Atlantic ports and the Pacific coast ports as a group.

New York's position in United States foreign trade.—While New York emphasizes the drastic decline in its percentage of the total United States import and export tonnage, particularly since World War II, its increasingly less favorable position relatively during this period stems largely from its failure to participate in the large increase

in the export movement of coal, its generally smaller share of the increasing exports of grain, and its inability to share proportionately in the burgeoning imports of petroleum and ores, especially iron ore. Exclusive of coal and grain, total exports through Baltimore increased from 1,871,867 [fol. 4990] tons in 1946 to 2,348,734 tons in 1955. Because of declines in such tonnage through Philadelphia and Hampton Roads, the exports through southern tier ports aggregated 5,600,743 and 5,316,338 tons in those respective years. Comparable data for the northern tier ports are 8,893,598 and 8,827,021 tons, respectively, of which about 8.5 million and 8.2 million moved through New York. Nothing in these data suggests that any decline experienced by the northern tier port group or by New York in their percentage participation in such exports was due to an increase in the participation of the southern tier ports.

Carload export traffic, other than coal, coke, and grain, unloaded at United States north Atlantic ports increased from 203,432 carloads in 1939 to 303,149 carloads in 1956, an increase of almost 100,000 cars. Of the increase, 57.7 percent was at New York, 7.4 percent at Philadelphia, 17.1 percent at Baltimore, 13.6 percent at Hampton Roads, and 3 percent at Boston.

From 1946 to 1955, as to export coal and grain, New York like all the other north Atlantic ports, except Albany as to grain and Hampton Roads as to coal and grain, suffered a decline in the aggregate exports of these commodities. Through Hampton Roads their movement increased from 4.9 million tons in 1946 to 30.7 million tons in 1955, as compared with an increase from 45.5 million to 65.5 million tons from all of the United States. About 95 percent of the increase in total export volume at Hampton Roads in this period was of coal traffic.

The United States imports of petroleum and ores aggregated 23.7 million tons in 1946 and 119 million tons in 1955. an increase of 95.3 million tons. Of this, about 66 percent or 63 million tons occurred at north Atlantic ports, divided as follows: New York 14 million, Portland 8 million, and Boston 2 million tons, a total of 24 million tons, as compared with an increase of 39 million tons at southern tier [fol. 4991] ports, divided: Philadelphia 26 million tons,

Baltimore 10.5 million tons, and Hampton Roads 2.5 million tons. During this decade New York's imports of these two commodity groups increased 181 percent, as compared with 400 percent for the United States and 247 percent for all north Atlantic ports.

Summarizing, the exceptionally heavy exports of coal through Hampton Roads and the large increases in imports of petroleum and ores, in absolute volume and percentage-wise, through Philadelphia and Baltimore, largely explain the loss of the relative position which New York has experienced in United States ocean-borne foreign commerce. As shown in appendix A, if the tonnages of those bulk commodities and also that of export grain are excluded from the total tonnage of imports and exports through the north Atlantic ports, New York increased its percentage of the movement through those ports from 53.7 percent in 1935 to 56.9 percent in 1955.

Also contributing to the decline in New York's relative position as to total United States exports and imports has been the rapid growth since World War II of trade through the south Atlantic, Gulf, and Pacific ports, due in large measure to the expanding population and industrial development in the areas tributary to those ports. Their relative importance in the handling of general cargo in 1956, as compared with New York and other north Atlantic ports, is shown in appendix B.

Considering New York's position in the competition for all north Atlantic foreign trade, the following table shows, in the first column, the total of exports and imports for 1955:

Port	(1) Total (tons)	(2) Imports (tons)	(3) Exports (tons)
New York	38,897,567	9,442,033	8,612,347
Philadelphia	37,136,849	2,965,677	2,619,374
Baltimore	25,733,775	4,370,151	4,640,435
Hampton Roads	35,888,849	1,713,203	2,031,777

[fol. 4992] If import petroleum and iron ore, and export coal are eliminated, for the reasons among others that they

do not move to or from the affected territory or the rates thereon are not in issue in this proceeding, the tonnages are as shown in columns (2) and (3). As those in column (3) include grain and those in column (2) bulk ores other than iron ore, they do not indicate the relative value to the several port communities of the tonnages. The following table shows the tonnages, excluding these commodities and also those previously named. Accordingly, it is representative of the total general cargo which moves through the ports named:

Port	Total (tons)	Imports (tons)	Exports (tons)
New York	16,612,501	8,434,065	8,178,436
Philadelphia	4,455,974	2,651,018	1,804,956
Baltimore	3,795,869	1,648,071	2,147,798
Hampton Roads	1,937,100	1,142,812	794,288

These tables show that New York handled more tonnage of all commodities than any of the southern tier ports; excluding petroleum, coal, and iron ore, it handled nearly as much as those ports combined; and it handled about 60 percent more general cargo exports and imports than those ports combined.

The foregoing comparative data relate to the foreign traffic flow through the ports regardless of its domestic origin or destination, or the mode of inland transportation when the goods move to or from an inland point other than the port of entry or port of export. A July 1957 issue of a Port of New York Authority publication states that trucks pick up and deliver over 50 percent of the export and import general cargo at the port of New York's piers. Reference is made therein to an instance of 35 trailer-loads of machinery moved from a single pier in one day. There is no indication that any bulk cargo moved to or from any of the ports by truck. But such cargo moving between the affected territory and New York has available to it inland barge [fol. 4993] service by the New York State barge canal.

Alleged loss of competitive position since 1945.—The respondents claim that the northern tier ports have suffered a loss in relative position with respect to north Atlantic port tonnage beginning in 1946. In analyzing this claim all

export tonnage exclusive of coal and grain, and all import tonnage exclusive of petroleum and iron ores, will be considered. The results, with those for New York stated separately, are shown in appendix C.

In 1955, of the north Atlantic port exports, the share of the four northern tier ports, excluding coal and grain, was 62 percent, the same as it was in 1945, and slightly higher than it was in 1946, the year when the respondents claim their relative position began to deteriorate. The volume of exports through Boston of 435,118 tons in 1955 was the largest for any year shown except 1943, a war year, and was more than double that of 1946. As the table shows, the southern tier ports' exports declined from 1946 to 1955, Baltimore alone showing an increase from 1.9 million tons to 2.3 million tons.

As to imports, excluding petroleum products and iron ore, the northern tier ports are not shown to have suffered a marked loss in relative standing since World War II. Their 1955 volume was 11.2 million tons, as compared with 7.4 million tons in 1946. Those volumes represented 58 percent and 55 percent, respectively, of the total of these imports through the north Atlantic ports. Since 1945 their share of that total has ranged from 53 to 58 percent. Boston's share declined from 8 percent in 1946 to 7 percent in 1955, but its volume of 1.4 million tons in 1955 was about 40 percent greater than in 1946. There was little change in Portland's or Albany's relative position from 1946 to 1955, although their tonnage expanded.

The imports through New York increased from 6.2 million tons in 1946 to 8.4 million in 1948, while those of [fol. 4994] Baltimore increased from 2.2 million to 3.3 million tons. By 1955 these had risen to 9.4 million and 4.4 million tons, respectively. Baltimore's increase over 1946 was 2.2 million tons, but 1.3 million tons of this represented an increase in the movement of ores, other than iron ore. Of the increase of 3.2 million tons at New York from 1946 to 1955, about 0.6 million was of such other ores. While the volume of these ores rose from 0.4 million to 1 million tons at New York, it rose from 1.4 million to 2.7 million tons at Baltimore and from 0.6 million to 0.7 million tons at Philadelphia.

Foreign traffic embraced in this proceeding.—The record contains no complete comparative data from which the trend of the subject traffic, and the effect of ocean-rate equalization upon it, to and from New York and the other northern tier ports, can be determined. Nor were such data presented for the southern tier ports. The only evidence indicative of such a trend relates to the post World War II period for the port of New York only, and is restricted to traffic of the four respondent railroads as shown in the following table. The data in the last column relate to a test period hereinafter described. As most of the tonnage data for Boston are for this period, few comparisons with any earlier period are afforded. The Boston & Maine shows comparable Boston tonnage for 1951. Its export traffic in that year was 1,264 carloads, as compared with 3,253 carloads in 1955-56. All but 46 and 18 of such shipments were of grain. Its import traffic from Boston was 188 and 226 carloads for those years, of which 34 and 28, respectively, were wood pulp:

[fol. 4995]

	1946 Tons	1947 Tons	1951 Tons	August 1955-July 1956 Tons
New York Central:				
Import	148,073		229,373	149,002
Export	775,644[1]		502,791	515,403
Delaware, Lackawanna & Western:				
Import		72,912	163,646	91,492
Export		407,868	273,795	351,108
Totals	923,717	480,780	1,169,605	1,107,005
	Carloads		Carloads	Carloads
Erie:				
Import	3,969		5,916	3,164
Export	18,807		22,816	19,660
Lehigh Valley:				
Import	5,042		5,348	2,939
Export	13,630		14,621	10,555
Totals	41,448		48,701	36,318

[1] Does not include grain; statistics unavailable.

The protestants contend that the data thus shown reveal a creditable performance under the prevailing differentials. They urge that in evaluating them it must be borne in mind that 1946 and 1951 reflect the influence of war activities; nevertheless exports of the New York Central and Lackawanna in the test year exceeded those of 1951, and their imports in that year exceeded those in 1946 or 1947. They stress that such traffic was obtained despite the development in these postwar years of fierce truck competition, affecting particularly general cargo, and in the face of differentials often greater than the normal ones here in issue. Other than an unusually heavy volume of export grain through the north Atlantic ports in 1951, the years 1946 and 1951 do not seem atypical in respect of the kind of traffic here considered.

[fol. 4996] In view of the paucity of comparative data relating to the trend in the movement of foreign traffic between the several north Atlantic ports and the affected territory, an attempt was made to demonstrate that New York's failure to participate more fully in this traffic is due to large increases in the volume of foreign tonnage through the southern tier ports, and that these tonnages originated in or were destined to the affected territory.

The Authority contends that a close correlation existed, in the period 1929 to 1954, between manufacturing employment in the United States and total foreign trade. During that period the number of manufacturing employees increased by 67 percent and the tonnage of ocean-borne exports and imports increased 82 percent. As that tonnage includes large quantities of export coal and grain, and of import petroleum, production of which bears little, if any, direct relation to manufacturing, it is clear that the validity of this premise has not been established. The Authority undertook to show also that there is a similar correlation between the total foreign tonnage moved through New York and the southern tier ports, and manufacturing employment in the affected territory and in the immediate hinterlands of those ports. The increase in tonnage was 118 percent and in employment 50 percent, during the same period.

Assuming the existence of the stated correlation, the Authority reasons that in order to determine which north

Atlantic port or ports serve as a gateway for the traffic to and from the affected territory it is necessary simply to compare the tonnage flowing through the ports with the manufacturing employment in their hinterlands. It argues that any increase in volume not generated by such employment in the port's hinterland area necessarily represents traffic to and from the affected territory. It shows data [fol. 4997] which purport to disclose such a situation with respect to the southern tier ports; that is, an increase in employment in their hinterland from 1.4 million to 1.8 million, contrasted with total export and import tonnage through those ports of 16.5 million and 63 million gross tons in 1929 and 1954, respectively.[7] From these it concludes that there has been an "astonishing increase" through these ports which cannot be ascribed to the relatively small increase in employment in their hinterland, and hence that this increase was caused by traffic to and from the affected territory.

An analysis of the tonnage data demonstrates the unsoundness of this conclusion. The data of record show that export-import tonnage through the southern tier ports was 19.1 million net tons in 1928 and 67.3 million tons in each of the years 1947 and 1954. Of these, petroleum, iron ore and concentrates, coal, and grain aggregated 10 million tons in 1928 and 54.4 million tons in 1954. Export coal and grain bear little, if any, relation to manufacturing employment; petroleum imports do not move to the affected territory; and probably very little of the iron ore in 1947 and less than half of that in 1954 moved to that territory. The aggregate tonnage of petroleum, coal, iron ore, and concentrates was 51.7 million tons in 1954, an increase of about 43 million tons over 1928, as compared with an increase in total foreign tonnage of 48.2 million tons, 1954 over 1928. Thus, there is little support for the conclusion that the increase in tonnage through the southern tier ports is attributable to movements of the subject traffic from and to the affected territory.

The traffic studies.—The respondents made a study of the subject traffic, broken down by commodity classes, which

[7] The volume shown for 1947 is 60.4 million gross tons.

moved to and from the northern tier ports over their lines during a 12-month test period ended July 31, 1956. The protestant railroads made a similar study of the traffic [fol. 4998] which they handled through the southern tier ports and also of that to and from New York over the Pennsylvania and the Baltimore & Ohio. Traffic data of The Central Railroad Company of New Jersey to and from New York were made available to them and were included in their study, although that road did not join in publishing the reduced rates to New York and is not a party to this proceeding. The protestants also compiled tonnage data for comparable port traffic handled over the same lines to and from areas other than the affected territory. All of the data relating to the subject traffic were combined to present a complete picture thereof handled to and from the affected territory in the test year.

While the record lacks comprehensive evidence from which comparative trends of this traffic through the northern tier ports and the southern tier ports can be determined, the data in the combined studies for the test year show, in detail, the volume of the specific commodities, including export grain but exclusive of export coal and import petroleum and iron ore, which moved through each of the ports during that period. These data are summarized in appendices E and F by commodity groups and for the two opposing port groups, and show the extent to which each port and the railroads which serve it participated in the traffic in issue at the time this proceeding was instituted. These data are the best evidence which the record affords of the combined relative impact of the present differentials and other circumstances upon the movement of the subject traffic through the several ports.

Import tonnage here concerned.—As shown in appendix E, the 2,121,822 tons of imports which moved through the southern tier ports exceeded by far the 676,456 tons through the northern tier ports, but the difference in these volumes is somewhat less than the volume of products of mines, [fol. 4999] 1,622,761 tons, imported through the southern tier ports. The latter products consisted almost entirely of ores and concentrates, other than iron ore.

The next largest tonnage is in the manufactures and miscellaneous group, the total of 745,022 tons being divided almost equally between the two groups of ports. New York obtained 47.6 and Baltimore 28.2 percent of the total.

The chief agricultural imports were coffee and fresh bananas. Coffee totaled 135,762 tons and moved almost entirely through New York. Of the total of 117,142 tons of bananas, 62,664 tons moved through Baltimore and 53,946 tons through New York. Thus, the only import tonnage which moved in substantial volume as to which the northern tier ports failed to obtain a proportionate share was that of ores and concentrates, exclusive of iron ore.

Boston's imports of 17,739 tons, including 5,088 tons of crude rubber, were somewhat greater and more diversified than those of Portland, but they were insignificant as compared with the volume at New York or any of the southern tier ports. They comprised only about 0.6 percent of the total imports, excluding petroleum products, which moved to the affected territory through the north Atlantic ports, contrasted with 1.7 million tons moved through the port in 1955 to all destinations, a volume almost 100 times greater. Imports through Portland consisted of relatively small quantities of clay and wood pulp.

Export tonnage here concerned.—As in the case of imports, the preponderance of the 8.2 million tons of exports through all north Atlantic ports, or 63.7 percent, moved through the southern tier ports. The excess of 2,234,171 tons moved through those ports reflects the greater tonnage of agricultural products consisting of 3,993,051 tons, or 82.1 percent of the total of these products (as compared [fol. 5000] with 868,000 tons or 17.9 percent through the northern tier ports), offset by the difference in the tonnages of manufactures and miscellaneous. Those tonnages were 1,099,690 tons for the southern tier ports and 1,913,481 tons for the northern tier ports, or 36.5 percent and 63.5 percent, respectively, of the total. New York's share was 63.4 percent and that of Baltimore 29.3 percent. The total of about 3 million tons included 950,022 tons of manufactured iron and steel, of which 61 percent moved through New York and 37 percent through Baltimore.

Thus, of the three groups supplying the principal volume of exports, only in the agricultural products group, of which about 88 percent was corn and wheat, were the southern tier ports able to show a greater share of the tonnage than the northern tier ports. The proportions of the agricultural exports through Boston, Albany, and Portland were 7.4 percent, 2.9 percent, and 1.4 percent, respectively, of the north Atlantic total, as compared with 6.2 percent for New York. Except for some grain, very little export traffic moved from the affected territory through Boston, Portland, and Albany. For example, only 68 carloads of such traffic to Boston were handled by the New Haven, as compared with 1,867 carloads from unaffected territory.

Summary of foreign traffic here concerned.—Of a total of about 11 million tons of exports and imports, exclusive of import petroleum and iron ore and export coal, handled between the north Atlantic ports and the affected territory in the year ended July 31, 1956, about one-third moved through the northern tier ports. The preponderance of the tonnage passed through the southern tier ports, but as to imports the excess consisted almost wholly of ores and concentrates other than iron ore, and as to exports it was represented entirely by grain and grain products. Of the [fol. 5001] only other group of importance in this case, manufactures and miscellaneous, almost two-thirds of the exports and over one-half of the imports were handled through the northern tier ports. Thus, the evidence demonstrates the ability of those ports as a group to attract the preponderance of the tonnage, except as to export grain and import ores and concentrates, the movement of which appears to be largely attracted to the southern tier ports because of more adequate facilities or other circumstances relating peculiarly to those commodities, discussed later in this report.

The complete dominance by New York of the north Atlantic general-cargo traffic to and from the affected territory is clear. Of imports, its volume exceeded that of all the other ports combined, was more than double that of Baltimore, and almost four times that of Hampton Roads. As to general-cargo exports, New York's volume was 62.7 per-

cent of the total volume for all of the ports and over 50 percent greater than that of the southern tier ports combined. Also, it was more than double the Baltimore volume and more than ten times that of Hampton Roads.

Both as to the total exports from the affected territory and the total imports handled to that territory, New York's volume was more than double that of Hampton Roads, and about three times that of Philadelphia. Baltimore's tonnage surpassed New York only because of its large volume of export grain and of import bulk ores, other than iron ore.

Bulk cargo commodities.—The respondents call attention to the increase in total exports of grain since 1945 through Baltimore and Hampton Roads, and the decreasing volume of such traffic through their ports. The number of carloads of all export grain handled at the several ports in 1945 and 1956, respectively, were as follows: Portland, 8,960 and 1,639; Boston, 6,462 and 10,607; Albany, 2,270 and [fol. 5002] 13,709; New York, 21,419 and 12,639; Philadelphia, 26,423 and 23,423; Baltimore, 43,339 and 51,817; and Hampton Roads, 2,284 and 19,035.

As in the case of other traffic, the record contains little evidence showing the trend of grain exports to the respective ports from the affected territory. However, as shown in appendix F, this grain tonnage is an important part of the commerce of the southern tier ports. The volume of 2,339,309 tons moved through Baltimore in the test year represented more than 70 percent of all the export tonnage herein considered, and that exported through Philadelphia and Hampton Roads represented over 80 percent of all exports from the affected territory through each of those ports. The corresponding movement of export grain through New York was 204,000 tons, which was less than 10 percent of the tonnage of all commodities originated in the affected territory and exported through that port. Thus, the grain tonnage from the affected territory to Baltimore almost equaled the total export tonnage from that territory to New York.

While, as stated, New York's general-cargo tonnage far exceeds that of Baltimore, the protestant railroads have improved Baltimore's position as a port by attracting bulk

commodities, chiefly grain and bulk ores, for which they have provided specialized loading or unloading facilities. As to grain, from 1915 to 1924 they constructed three modern elevators equipped for handling, cleaning, and bagging grain, with a storage capacity of 11.5 million bushels. This was increased to 13 million bushels in 1956. They provided berths for loading simultaneously at least eight ocean vessels directly from the elevators. New York continued to lead Baltimore by a wide margin in the export of grain through 1943. Notable in contributing to its supremacy were numerous parcel lot shipments moving in liners affording [fol. 5003] direct service to foreign ports, and the availability of grain exporters at the port. Also, ships could load grain from lighters while taking on general cargo on the pier side, thus effecting important savings. With the heavy Government exportation after World War II, and its need for storage capacity, the Baltimore facilities have attracted expanding volumes, which began to move increasingly in full-cargo lots.

Despite its pre-war leadership, New York's elevator facilities and storage capacity of 10.75 million bushels in 1905 dwindled to 3 elevators, one of which, on Gowanus Bay, has no direct rail connection, and another only limited storage capacity. Their combined capacity is now only 4.5 million bushels. The construction of an elevator with a capacity of 13.5 million bushels at Albany in 1932, presently operated by a private interest, also affected the distribution of export grain among the north Atlantic ports through the years. However, significant changes beginning in 1952 reflect the increasing importance of commercial operations, and the Government's activity is of less relative importance. Parcel lot shipments are increasing, and large exporters have leased or constructed elevators at Boston and Norfolk, in addition to the private operation at Albany.

For many years prior to May 1, 1952, the Norfolk & Western operated its Sewall's Point elevator at Norfolk. On that date it leased it to the Continental Grain Company. Private operation enables the merchant to blend and upgrade the grain, including grain purchased from trucks. Receipts at this elevator, which ranged from a few hundred to 1,749 carloads in the years prior to 1945, and from 2,100

to 4,300 carloads from 1945 to 1951, rose to 22,316 carloads in 1955. The operators of such facilities will no doubt continue to use them intensively, irrespective of the present [fol. 5004] freight rate adjustment. It is noteworthy that in 1952 the ex-lake rates on grain from Buffalo to the north Atlantic ports were equalized, and that Norfolk's share of that grain increased in that year from almost nothing to 6.9 percent. For the years 1952-56 its share averaged 15.3 percent, and the average for New York was 27.5 percent. Steamship lines at New York have begun to allow shippers a discount of 50 cents per ton from the ocean rates if the grain is loaded by lighter and floating elevator while the vessel is docked at a general-cargo pier. Beginning in early 1957, the Commodity Credit Corporation has sold grain delivered on track at any north Atlantic port at the same price, thus absorbing any differential in the inland freight rates.

The combination of several of the foregoing circumstances has affected Baltimore's grain traffic. Its share of north Atlantic exports declined from 47.6 percent in 1952 to 36.2 percent in 1956 and 25.4 percent in the first 9 months of 1957. In the same period Norfolk's share increased from 5.6 percent to 19.9 percent, Boston's share from 5.6 percent to 14.5 percent, and New York's share from 6.4 percent to 11.1 percent.

Baltimore has also made special efforts to attract low-grade bulk imports such as chrome and manganese ore, which move both in full-cargo lots and in large parcel lots of from 2,000 to 5,000 tons. Three railroads have built special ore-handling piers with high-capacity, efficient unloading facilities, permitting fast discharge of vessels and dispatch of the ore to the consignee. These facilities began operation in 1917, 1930, and 1951, respectively. Their use in 1956 was substantially less than maximum capacity, but with the increasing demand for import ore following the war these installations have proved attractive.

Almost all of the 218,151 tons of fertilizer from the affected territory exported through Baltimore in the test year [fol. 5005] (22.6 percent of its general cargo exports) was sulphate of ammonia. About 80 percent of this is bagged at the piers, using specialized facilities. No other north At-

lantic port except Hampton Roads has provided similar facilities. Also, special bulk-loading facilities have been installed to handle the bulk portion of this commodity.

Relative expenditures for port facilities.—The characteristics of the harbors at the several ports, their proximity and relative ease of access to the open sea, the scope and variety of yards and other rail and marine terminal facilities and equipment provided, and the types, capacities, and locations of the various physical facilities, including piers, grain elevators, and other installations at those ports, are shown in detail of record.

Expenditures for development of physical facilities at north Atlantic ports in the years 1946 to 1955 aggregated $266,000,000. The portions expended for general cargo facilities and specialized facilities at the principal ports appear in the following table:

Port	Number of new general cargo berths	Expenditures, 1946-1955 (Millions of dollars) General cargo facilities	Specialized facilities
New York	32	$92	$22.7
Boston	10	29.3	6
Total	42	121.3	28.7
Baltimore	2	6.8	25.8
Philadelphia	4	6.2	27.6
Newport News	2	1.4	22.6
Norfolk	4	6.5	5.2
Total	12	20.9	81.2

From the foregoing it is apparent that in making these expenditures the southern tier ports have stressed specialized and bulk-cargo facilities while New York and Boston have emphasized general-cargo facilities.

Value of port commerce.—New York is not only the largest tonnage port, but its share of the total value of United States foreign trade also is the greatest. The Authority reported the 1956 value of foreign commerce moving

through the port as $8.3 billion, an increase of 7 percent [fol. 5006] over 1955 and 31 percent over 1954. The value of all exports and imports through New York in 1955 was $7.2 billion, as compared with $3 billion for the southern tier ports combined. The total value of such commerce in 1955 for New York was 43.7 percent of the United States total, as compared with 39.6 percent in 1954.

The average value per ton in 1955 of exports-imports, exclusive of export coal and grain and import ores and petroleum, was $444 for New York and $247 for Boston, as compared with $145 per ton for Philadelphia, $164 for Baltimore, and $287 for Hampton Roads. The last amount reflects the value of tobacco exports, very little of which originates in differential territory. If tobacco were excluded, the average for Hampton Roads would be $153. The total dollar value of the annual exports-imports through New York from 1887 to 1899 was, roughly, 9 or 10 times that at Baltimore. From 1920 to 1925 this increased to about 20 times, which ratio continued long after 1935. With the increase in volume of bulk cargo after World War II, the lower ratio again generally prevailed. The table in appendix A shows comparative values for New York and Baltimore.

Weight to be accorded the distance element.—There is much evidence of record relating to distances by rail between representative points in the affected territory and the several north Atlantic ports, including Canadian ports; also between them and other interior points and south Atlantic and Gulf ports; and by ocean between these United States ports and representative overseas ports. The respondents and the northern tier port interests deny that they have any significant disadvantage in their rail distances as compared with the southern tier ports. Such distance disadvantages as they have are much less than the substantial differences in distances to and from some other ports which have a parity or near parity of rates, including the Canadian ports, and the wide differences which obtain where the several south Atlantic and Gulf ports are equalized.

[fol. 5007] The southern tier ports, particularly Baltimore, emphasize the advantage in distance which they have to and from certain points in the affected territory. The average of the short-line distances from class-rate base points in the affected territory is 698 miles to Baltimore, 750 miles to Philadelphia, 804 miles to New York, and 921 miles to Boston. The average distance between Hampton Roads ports and the affected territory is 883 miles, as compared with 853 miles between that territory and New York. It is apparent that considerable disregard of rail distances is characteristic of all port adjustments, as is was in the establishment of the rates here dealt with. See *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I.C.C. 691, 696. In considering this matter in an early proceeding, *In the Matter of Differential Rates, supra* (1905), and the justness of the suggestion that each port should be given the rate to which its location entitles it, this Commission observed that traffic does not stop at the ports but moves to foreign destinations, that more important was the fact that as seaports the four large cities from Boston to Baltimore, inclusive, had a fundamental advantage of location which entitled them to participate in the foreign trade, and that the public interest required that this right be recognized. The conclusion reached (page 77) was that, in the public interest, the rates should be so adjusted "that all the ports and the various lines serving them may fairly compete for this traffic." That this is also the purpose of the 1935 amendment to section 3 of the act was indicated in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co., supra; Nueces County Nav. District No. 1* v. *Baltimore & O. R. Co.*, 223 I.C.C. 75, 96; and *Port of New York Authority* v. *Baltimore & O. R. Co.*, 248 I.C.C. 165, 179. In the *Albany* case, at page 162, we said:

> [fol. 5008] The port rates * * * have, as their chief objective, the maintenance of a competitive relation between the ports. They are not distance rates. * * * adherence to the distance principle is incidental, and always gives way when necessary to the maintenance of the differential relation between the ports.

Steamship services at north Atlantic ports.—The types of ships engaged in foreign commerce on routes to and from the north Atlantic ports include those able to carry a wide variety of cargo, some specially designed to carry only one or more types of cargo, various types of general-cargo vessels which also are fitted to carry some specific types of cargo, or specialized vessels which are equipped also to carry some general cargo, generally on deck. The more specialized types are tankers, refrigerated ships, and coal-carrying vessels. General-cargo vessels carry all kinds of dry nonbulk cargo, as well as some dry bulk cargo, such as grain.

Three types of vessel service are available for ocean cargo. "Liners" are operated by the steamship line on schedules at regular intervals between designated ports. "Tramps", on the other hand, do not operate on schedules, but sail wherever traffic is available. They are the contract carriers of the water shipping business, are usually smaller and slower than liners, and may take a full load for one shipper or partial loads for several shippers. The third kind of service, not important in most foreign trade, is performed by shipper-owned vessels. They may carry freight for hire as well as for their owners' account.

General cargo, especially where delivery time is of importance, is most often carried by liners, since the shipper can rely on their published schedules. Where time of delivery is not crucial or when liner space is short, some shippers will use tramps, which generally carry bulk cargo, such as coal, grain, sulphur, fertilizer, or ores and bulk [fol. 5009] liquids. Shipper-owned vessels usually carry bulk and specialized cargo such as oil, coal, ores, and refrigerator cargo.

The frequency and quality of sailings at a port are largely dependent upon the availability of cargo. If the volume of traffic is adequate, good and frequent sailings will be available. Rescheduling and rerouting of vessels to take advantage of cargo availability are relatively simple matters. Frequently the only consideration, except where the cargo is not suited to the type of vessel space, is whether the new cargo represents a profitable haul as compared with other uses which may be made of vessels.

Liner operators commonly call at more than one port in a range so that vessels sail fully loaded, and their schedules are altered accordingly. Rerouting of tramps operating on voyage charter to secure desired cargo is characteristic of such an operation. Thus, as to these types of transportation availability of freight is a primary consideration.

The most important factors which influence the shipper of export or import freight in the choice of a port are the total cost of hauling the goods, the total time in transit via competing ports, and the service available at each port. The hauling cost involves principally the ocean freight and the rail freight rate. Other lesser items are possibilities of damage due to excessive handling in congested ports and of incurring storage due to congestion or delayed sailings.

Importance of time in transit depends upon the kind of freight. As freight rates are small in relation to the value of high grade traffic, they may be of less concern to a shipper than time in transit, and dissuade him from routing such freight over a lower-cost route when the higher-cost route affords the quickest service. On the other hand, the shipper of low-grade freight, as to which the trans- [fol. 5010] portation cost represents a greater proportion of the delivered price generally uses the lowest-cost route to remain competitive, and time in transit is a secondary consideration. Port services, particularly forwarding, banking, insurance, brokerage service, and availability of sailings are important, but relatively less so in the case of low-grade freight than of high-grade tonnage. Also, shippers of low-grade commodities such as ore, grain, coal, and other bulk cargo which usually move in fungible and continuous lots, are not greatly concerned with time in transit.

Comparison of dry-cargo vessel services at New York and Baltimore.—The consist of water-borne tonnage at the southern tier ports is for the most part bulk cargo, such cargo comprising about 90 percent of Baltimore's tonnage. Acting on the premise that the volume of general cargo which they can attract is a significant measure of the economic wellbeing and prosperity of a port community, these ports presented a comparative study of general dry-cargo

steamship service available at the five major north Atlantic ports. Based on data supplied by the United States Maritime Administration showing all general-cargo vessels in foreign trade calling at one or more of these ports in the six months ended December 31, 1955, which is indicative of the relative quantity and quality of the service available, the following comparisons were developed:

	Number
Ships calling at New York	2,720
Ships calling at Baltimore	1,357
Ships calling at New York but not at Baltimore	1,532
Ships calling at Baltimore but not at New York	181
Ships that both loaded and discharged general cargo at New York but not at any other of the 5 ports	678
Ships that both loaded and discharged general cargo at Baltimore but not at any other of the 5 ports	19
Direct inbound ships unloading general cargo:	
At New York	1,451
At Baltimore	171
Direct outbound ships loading general cargo:	
At New York	1,767
At Baltimore	149

[fol. 5011] The order in which ships arrive at and depart from the several ports included in their itinerary is important to shippers, particularly of general cargo. Topping off with such cargo at New York is a primary characteristic of the trade. As indicative of the superior quality of the service at that port, a count of vessels which called there and at Baltimore during this period, and the elapsed time between their arrival at or departure from one as compared with the other, shows that as to earlier arrivals New York was favored with an advantage of 882 ship-days, while Baltimore's advantage was 246 ship-days. The advantage in later departure time was 1,039 and 199 days, respectively. The record shows similar advantages in service of general-cargo vessels, New York over Hampton Roads.

Numerous other comparisons show New York's preeminence in general-cargo services and in direct sailings over the major-trade routes. For example, New York had

1,792 direct general-cargo departures to 180 first foreign ports of call, contrasted with 162 such departures from Baltimore to but 53 such foreign ports. New York had 1,475 direct general-cargo entrances from 200 different last foreign ports of call, as compared with 229 and 89 for Baltimore.

Data to rebut the foregoing showing were presented on behalf of New York. These relate to dry-cargo tonnage and and to dry-cargo vessel sailings for 1951 and 1956 at New York and Baltimore. As they include bulk-cargo tonnage, such as large volumes of coal and iron ore, and vessels reported as bulk-cargo carriers, they are not indicative of the general-cargo services available at those ports.

The record is convincing that New York has a preponderance of excellent steamship services as compared with the southern tier ports; and that its general-cargo services far surpass those at such ports, and afford much more frequent sailings and service to and from a far wider range of trading areas. New York concedes its supremacy in this respect, [fol. 5012] but contends that its superiority is rapidly diminishing. To support this claim it relies also on dry-cargo vessel sailings, including bulk-cargo vessels which handle increasing volumes of coal and iron ore and some grain, of which only the latter is embraced in this proceeding.

Because of more frequent steamship services to a wider range of foreign ports available at New York than at southern tier ports, expenses incurred by shippers incident to delays at the latter are frequently avoided at New York. Free time accorded by the railroads, and wharfage and storage charges on import and export freight when held on their piers, are the same at all north Atlantic ports. This free time is 7 days on export freight and generally 5 days on import freight.

On export traffic the consignee or exporter orders the freight delivered by lighter to the steamship line's pier within the free time period. Thus, storage charges on export freight which accrue after the expiration of free time when the freight is assembled on railroad piers, as at the southern tier ports, can be avoided at New York by ordering delivery

to the steamship line piers within the free time. On import freight discharged at New York to a pier controlled by the steamship line, the latter allows the consignee 5 or 6 days to remove the freight. Since the railroads do not receive this freight directly from the ship, no question of free time arises as to it.

The cost to the shipper occasioned by the delay which occurs between loading at Baltimore and departure from New York (or arrival at New York and unloading at Baltimore) is frequently greater than the differential. A map exhibit presented by the Authority showing rail terminal facilities at New York carries the inscription "Save Time—Save Money. Ship Via Port of New York." The witness [fol. 5013] through whom it was offered explained that the money saving would vary with individual shipments of a large variety of producers in the affected territory, but that the Authority believes that on some of their shipments, dependent upon the facilities and services available at New York, such savings are effected.

Rail terminal service on foreign freight at New York.— At New York, except for a few railroad-owned piers of little or no importance which are used for loading or unloading ores and scrap, the railroads have no piers comparable to regular cargo piers provided by them at the southern tier ports. Pier facilities at which the terminal operations of steamship lines are conducted are either owned by them or leased from the City of New York or the Authority. They are generally on Manhattan Island or Brooklyn water fronts and to a smaller extent on the lower Jersey shores or Staten Island. Except for some of the banana traffic which is unloaded at a private terminal of the New York Central operated by the United Fruit Company at Weehawken, N. J., ships loading and discharging general cargo do not generally dock at the railroad terminals in New York harbor. Such traffic moving to and from New York by rail is usually unloaded from or loaded to cars by manual labor at railroad pier facilities, mainly on the New Jersey side of the harbor, where it is transferred to or from lighters and lightered, or trucked in lieu of lighterage, between these piers and the steamship piers at vari-

ous points in the harbor.[8] A relatively small proportion of the traffic is transferred by carfloat.

During September 1956, of the export-import tonnage handled at New York by four of the respondents and the [fol. 5014] protestants which serve the port, 16.6 percent was transferred directly between car and ship and the remainder was handled by railroad marine equipment or trucked in lieu of lighterage to or from shipside. The traffic which is loaded or unloaded directly between car and ship consists almost entirely of bulk commodities. For example, the New York Central's pier 9 at Weehawken is its only pier in the New York terminal area used primarily for direct docking. It is used almost exclusively for bulk import ore. That respondent has but one grain elevator, at pier 7, Weehawken. Its capacity is 2 million bushels. Grain handled there may be either loaded directly into ships or transferred to them at other points in the harbor, using floating elevators.

Supplementary port services at north Atlantic ports.— New York, in addition to its preponderance of steamship services, has a wealth of supplementary port services. Their several functions and the influence which they exert in supporting the movement of cargo, and in promoting and expediting foreign trade, were shown in detail by the protestant railroads in a comprehensive survey of 12 different types of such services available at the southern tier ports and New York. They include international freight forwarders, custom house brokers, international banking facilities, steamship-line representation, consular services, combination export managers, foreign trade zones, commodity exchanges, ship brokers, marine insurance, foreign government purchasing agencies, and foreign chambers of commerce. Among other functions, these contribute to the speed and promptness of movement of cargo, thus effecting reductions in interest charges and meeting of letter-of-credit

[8] A description of the rail and water terminal facilities at New York, the ways in which freight is handled at that port, and the lighterage limits of the harbor may be found in *Lighterage Cases, supra*, at pages 484 to 488. See also *State of New Jersey* v. *Baltimore & O. R. Co.*, 245 I.C.C. 581, 585-590.

deadlines, and avoidance of charges and penalties which arise from unfamiliarity with the demands of foreign-trade procedures.

The survey disclosed a notable concentration of these and other interrelated services at the port of New York. Among [fol. 5015] other advantages of such concentration, not readily appraised, are the personal contact necessary in the effective movement of cargoes, the knowledge of experienced personnel, and the specialization available in all types of services, particularly required by various types of cargo.

Although the record is replete with details showing New York's superiority as to each type of service organization, only the principal ones relating to international freight forwarders will be set out. Their principal duties include the tracing of shipments to the seaboard where their principal offices are generally located, and, when necessary, to the foreign destination; booking or arranging for cargo space and the consolidation of ocean shipments; preparation and processing of necessary papers relating to the exporting of shipments; clearance of the shipments in accordance with regulations of the United States Government, and arranging for certification of consular documents; and clearance of imported commodities through United States customs when the forwarder functions as a custom-house broker. The forwarder also may arrange for cargo insurance, packing and crating, inspection, marking, and warehousing or storage. The foregoing services are essential in promoting foreign trade and are relied upon by shippers and consignees as well as the ocean carrier whom the forwarder serves as agent. The forwarder also provides information on ocean and land freight rates, sailing schedules, sales outlets, and sources of supply in this country and abroad, and rules and regulations affecting foreign trade. In his capacity as agent of the ocean carrier he collaborates in performing essential services and substantially influences the movement of the traffic through ports where his offices are located, rather than through a rival port where his fees must be divided with the agent there employed.

The number of registered foreign freight forwarders who have their main or branch offices at each of the ports is as follows:

[fol. 5016]

	Main offices	Branch offices
New York	924	55
Portland	4	(1)
Boston	23	(1)
Philadelphia	29	11
Baltimore	23	16
Hampton Roads	13	10

(1) no data shown.

International freight forwarders maintain 49 main offices and 60 branch offices at points in differential territory. Of 32 main offices of those branches located at the four ports, 31 are in New York and one in Philadelphia. Branches of New York firms constitute 44 percent of all such forwarders in Chicago.

Effect of differential on shippers' use of ports.—A number of shippers in the affected territory testified in support of the proposed equalization. Several of them are using Great Lakes, south Atlantic, and Gulf ports for substantial portions of their import and export traffic, lower rates being an important, if not the governing, factor in the choice of those ports. The Authority states that diversion of general cargo from the respondent railroads serving New York has been primarily to railroads serving south Atlantic and Gulf ports, not to those serving other north Atlantic ports.

A manufacturer of paper products at Middletown, Ohio, receives from 10,000 to 15,000 tons of woodpulp each year. It is bought f.o.b. Baltimore, because of the lower import rate than from Philadelphia, New York, or Boston, and its tonnage moves either via Baltimore, or via Portland over differential routes through Canada on rates the same as from Baltimore. Its export shipments of 1,500 to 2,000 tons annually move through West Palm Beach, Fla., New Orleans, La., or Norfolk because of more favorable freight rates. A steel producer with plants in Pennsylvania, Ohio,

and Michigan ships 95 percent of its export traffic through [fol. 5017] Baltimore because of the freight differential as contrasted with the northern tier ports. Equalization of the rates to these ports would make available to it more sailings than the port of Baltimore affords.

A manufacturer of pig iron and ingot molds at Neville Island and Sharpsville, Pa., exports a substantial volume of pig iron, about 80 percent of which moves through Baltimore by reason of the differential and the remainder by rail-barge routes through New Orleans. If the rates were equalized with the northern tier ports it would use all of the ports. A manufacturer of steel exports, through its export subsidiary, over 100,000 tons annually of plates, sheets, and other articles from five plants in the affected territory. As to most of this it controls the selection of the port, but the ports used are not shown. A substantial portion is said to be routed through Baltimore and Hampton Roads because of the differential. However, only 5,416 tons moved through the latter port in the test year as compared with 580,073 tons through New York. A large manufacturer of heavy machinery with several plants in differential territory exports over 35,000 tons a year, about 80 percent of which moves through Gulf and south Atlantic ports. Its export traffic manager, with offices in New York, testified that in recent years it was forced to divert traffic previously moved through that port to other ports because of lower inland rates. However, the only example given of such diversion was Venezuelan exports, about 95 percent of which is now moved through New Orleans. Another manufacturer of machinery ships 75 percent of its exports, or about 15,000 tons, through New York to conform to conditions in letters of credit used by its customers. It is endeavoring to have these conditions made applicable through lower-rated ports.

The Union Carbide Corporation imported 378,438 gross tons of chrome and manganese ores in 1956 to three of its [fol. 5018] plants in Ohio and West Virginia, which are in the affected territory except as to Hampton Roads ports. Less than 1 percent of this moved through New York and less than 2 percent through Philadelphia. The remainder entered at Baltimore, from which the rates are 60 cents and 20 cents per gross ton lower than through New York

and Philadelphia, respectively. These ores arrive in shipload lots at ports designated by the receiver. Frequently, the plant to which the ore will ultimately move is not known and the ships are ordered to Baltimore to obtain the lowest inland rate. This shipper urges that with equal rates ships could be allocated freely according to the port's ability to accommodate them, which would permit a more equitable allocation of cars required for loading and reduce congestion at the ports.

It is apparent from the foregoing testimony that at least some shippers regard the differential adjustment as a controlling consideration in their choice of a north Atlantic port for shipments to or from the affected territory.

Rates to and from Boston.—The Port of Boston Commission lays stress on the fact that the port of Boston has been able to attract but little affected-territory traffic, and that the respondents, including the Boston railroads, since about 1935 have operated under a serious handicap. As early as 1923, Boston asserted that because of the differentials, export and import traffic between the affected territory and its port had been reduced almost to the vanishing point and that they prevented the movement of bulk cargo through that port. *Maritime Asso., Boston Chamber of Commerce* v. *A. A. R. Co., supra,* page 545.

It is urged that the reduced rates for Boston are lawful and should be permitted to take effect regardless of the conclusion which may be reached as to the respondents' proposal with respect to New York. As here presented, the respondents' proposal contemplates equalization of the [fol. 5019] northern tier ports as a group with Baltimore. None of the respondents has suggested a change in the rate relations as between the New England ports and New York. The average distance from Boston to points in the affected territory is 223 miles greater than from Baltimore and 116 miles greater than from New York.

Boston's total foreign-trade tonnage has expanded substantially since 1935 despite equalization of the ocean rates, as shown in the table below. But, as presently will appear and as indicated in appendix F, other than export grain, little traffic moves between the port and the affected territory:

Ocean-borne Foreign Commerce Through Boston
(Thousands of gross tons)

Year	Export	Import	Total	Percent of U.S.
1935	280	1,852	2,132	3.5
1946	395	2,438	2,833	2.6
1956	952	5,467	6,419	2.5

An analysis of Boston's tonnage since 1945 shows that it is primarily an importing port for bulk cargoes, which totaled 44 million net tons in the years 1946 to 1955, inclusive, or about 82 percent of its imports. They consisted mainly of petroleum products and moved almost entirely to destinations in or near the Boston switching district. Of 10,140 carloads of general-cargo imports in the test year, only 680 or 6.7 percent moved to the area west of Buffalo-Pittsburgh, and 8.4 percent moved to Canadian destinations. Of the 680 carloads, 270 moved over differential routes through Canada at rates lower than the standard rates. In that year, of 6,713 carloads of general-cargo exports, only 93 or 1.3 percent originated at and west of Buffalo-Pittsburgh, and of the 773 which moved to or from that area only 30 percent were transported over the New York Central into or out of Boston. Including grain, the Boston railroads handled only 5.6 percent of the export car-[fol. 5020] loads and 1.4 percent of the import carloads which moved between the affected territory and Boston, Philadelphia, Baltimore, and Hampton Roads.

The bulk of the foreign traffic in which the New Haven participates is that moving to and from nonaffected territory, principally New England. As to this segment, the great preponderance of the imports and most of the exports, aggregating about 7,000 carloads in the year ended July 31, 1956, flow through New York. Its traffic witness stated on cross-examination that, as compared with other railroads serving that port, it was under a definite handicap in competing for traffic from and to the affected territory.

Grain, Boston's principal bulk export, averaged about 18 million bushels annually from 1907 to 1919, and 5.2 million bushels from 1920 to 1955. The port attributes the

decline to loss of its ocean rate advantage, which tended to offset the inland differential at the southern tier ports.

New England imports many raw materials from which it manufactures generally low-density, high-valued articles. These, when exported, are usually referred to as top cargo, and seek a port which has a multitude of shipping services. As the area has few heavy, basic industries and produces few basic raw materials, Boston lacks sufficient bulk and bottom cargoes and commodities such as heavy machinery, automobiles, and trucks to attract ships. As a consequence, the limited sailings from the port deter shippers in its immediate hinterland from using it, causing further reductions in ship calls. Scheduled sailings for representative periods shown by Boston were 473 at New York, 220 at Philadelphia, 242 at Baltimore, 175 at Hampton Roads, and 65 at Boston. Of the latter, in 47 instances Boston was the first port of call to pick up export cargo, the least desirable schedule position.

Considering that most of the general-cargo traffic of the north Atlantic ports here concerned is attracted to New [fol. 5021] York despite its differential over the southern tier ports and over Albany, the failure of Boston, with rates the same as New York, to attract a larger volume of the traffic must be ascribed to factors other than an unfavorable rate relationship, chief of which are the superior steamship and port services which New York affords. The fact, as above shown, that much of the New England export-import traffic moves through New York confirms this. As to grain from the affected territory, traffic said to be more sensitive to rate differences than general cargo, Boston has been able (as shown in appendix F) to attract considerably more than New York, and about 2.5 times as much as Albany, which has lower rates. Such a marked difference in Boston's ability to attract these two types of traffic strongly suggests the existence of influences affecting the choice and use of ports far more powerful than the present port differentials. In *Maritime Asso., Boston Chamber of Commerce* v. *A. A. R. Co., supra,* at pages 563-564, referring to a decline in Boston's tonnage prior to 1921, we observed that the extent to which this resulted from the port differentials was difficult to determine, and

that one contributing cause of the difficulty was that Boston had equal rates with New York, its nearest and most powerful competitor. In *State of New Jersey* v. *Baltimore & O. R. Co., supra*, we disapproved a plus charge on this traffic to New York City over the rates to the New Jersey side of the harbor, as the complainant and the Boston intervener sought, and found the assailed rates to New York not unlawful. We found also that disturbance of the rate parity between the two sides of New York harbor, as sought, which would also have disrupted parity of rates as between New York and Boston, would most likely precipitate a chaotic situation such as prevailed prior to 1882.

In support of the argument that so long as the differential continues virtually no affected-territory traffic can [fol. 5022] move through Boston, that port points to the much larger movement of woodpulp to the affected territory from Portland than from Boston. The movements in the test period were 10,574 tons and 1,125 tons, respectively, as compared with imports of woodpulp approximating 40,000 tons and 100,000 tons, respectively. It attributes this to the fact that Portland's import rates, which apply over routes through Canada, are on the Baltimore basis and lower than those from Boston. It argues that this confirms the testimony of shippers and transportation experts who testified in support of the proposed equalization as to the effect of rate differentials.

The import rates from Portland have been on the Baltimore basis for over 30 years. Being ice free in winter, that port serves as a winter port for Canada and is accorded the same import basis as Halifax, St. John, and Montreal on traffic routed through Canada. The evidence is clear that the impact of the differential is of itself insufficient to induce the movement through Portland. Virtually the only commodities which are imported through that port are woodpulp and china clay, for which special handling facilities are provided at the port. They are raw materials used in the paper industry, which is the chief industry of Maine. As less than one-fifth of the woodpulp and one-fourth of the china clay move to the affected territory, it is evident that the movement to that territory is mostly in-

cidental to the movement through Portland for the local market.

In seeking to show that the differentially-lower rates from the southern tier ports are an absolute bar to its participation in the north Atlantic traffic, Boston also relies on evidence presented by the General Services Administration, an agency of the Federal government, which supports the respondents. This agency directs the routing of about 300,000 tons of import traffic annually to the affected territory. However, it moved no imports through Boston in [fol. 5023] 1955 and only 339 tons in 1956, contrasted with 294,000 and 195,000 tons in those respective years through Baltimore. The remainder of its north Atlantic imports moved through Hampton Roads and Philadelphia. It states that equalization would enable it to route traffic equitably as between the various north Atlantic ports. However, it moved none through Portland, although the same rates are available from that port as from Baltimore.

Import traffic through Portland.—The general basis of import rates from Portland over routes through Canada has been indicated. Except on import clay, specific commodity import rates over standard routes are not generally published from Portland. The Maine Central, joined by the Maine Port Authority, The Associated Industries of Maine, and the Maine State Chamber of Commeree, introduced evidence in support of mtaintaining the present differential under Boston and New York on imports through Portland over routes through Canada to the affected territory. They assert that any reduction of tonnage resulting from its elimination would have a serious economic effect upon the entire State of Maine, as the port now has few scheduled sailings, and as to imports, no regular arrivals. If entry of the only imports, woodpulp and clay, should be shifted to other ports outside the State, it would result in additional expense for land transportation to Maine industries, adversely affecting their competitive position.

The Maine Central expects no increase in exports to Portland if equalization is effected, as any export traffic which might be diverted from the southern tier ports would probably be attracted to the large-volume ports of New

York or Boston. It points to the decline since 1952 in the volume of import woodpulp which it handled from Portland to the affected territory as an indication that the differential is not large enough to maintain or increase this movement.

[fol. 5024] The imports of china clay through Portland increased from 46,938 tons in 1947 to 73,564 tons in 1956. The Maine Central's movement to the affected territory increased from 10,266 tons in 1952 to 16,408 tons in 1956 as the result of solicitation by rail and port representatives and a large investment for handling and storage facilities at Portland. These facilities, mostly of recent construction, have a capacity of 14,500 tons and were designed especially for china clay. No import china clay moves through Boston as that port does not possess the neeessary special facilities.

Rates to and from Albany.—Export and import rates between Albany and the affected territory have been the same as those to and from Philadelphia since 1936. However, except for some export grain, averaging about 15 percent of the movement through all north Atlantic ports since 1946, traffic between Albany and that territory has been almost negligible. Excluding export grain and coal and import iron ore (of which none moves through Albany) and petroleum, it has attracted less than 1 pereent of the total movement through north Atlantic ports. Of the tonnage moved during the test year, only 1.7 percent of the exports and 0.1 percent of the imports through those ports moved through Albany, as contrasted with 10.6 percent of the exports and 6.6 percent of the imports through Philadelphia, although both ports have the same rates.

The port takes the position that the present adjustment discourages or prevents its use; that it deprives it and shippers using it of just, reasonable, and nondiscriminatory rates; and that its favorable geographic location, being served by a water-level rail route and transportation over the barge canal and the Great Lakes, warrants a lower level of rates based on value-of-service as well as cost-of-service considerations. Accordingly, to encourage and promote freedom of movement through the port, it urges that

[fol. 5025] it should be accorded rates no higher than those to and from Baltimore and Norfolk.

Government export shipments.—The United States Department of Agriculture, through its Commodity Stabilization Service and Commodity Credit Corporation, exports large quantities of grain and processed foods through the north Atlantic ports, generally paying the transportation cost to the port of exit. It favors equalization of these ports at the lowest level of lawful rates because of the benefits which producers and shippers of these products and its export program would derive therefrom. Selection of a port of export involves many factors. A number of problems are encountered in routing the shipments, such as car supply, terminal charges, availability of warehouse or elevator facilities at the ports, and the coordination of their arrival with sailing schedules. Other conditions, such as strikes which are beyond the control of the Department, also influence the movement. Its field offices directing the shipments, other things being equal, use the port which will afford the lowest cost, but in some circumstances the port designated or preferred by the receiver is used.

In the year ended May 31, 1957, about 235,000 tons of processed foods were shipped at the direction of the Department's Chicago and Cincinnati offices from undisclosed origins. Of these, 48,000 tons moved through Philadelphia and somewhat less through Baltimore, Norfolk, and Newport News. About 62,000 tons moved through New York, 6,000 tons through Boston, and none through Albany or Portland. The shipment of grain by these offices from January 1, to June 14, 1957, were about 53 million bushels, of which about 29 million moved through the southern tier ports and 24 million through the northern tier ports, including about 11 million through Boston and 9 million through Albany.

[fol. 5026] *Government-controlled import traffic.*—The General Services Administration presented evidence in support of the respondents. It states that in the interest of economy, its duty and interest is to seek the lowest reasonable rates "in the furtherance of its shipper * * * interest", as a representative of the Government's execu-

tive agencies, and that with respect to foreign commerce this means that, other factors being equal, it should route its traffic through the ports having the lowest transportation cost. Accordingly, it favors equalization because it would enable it to select the port used on the basis of efficiency and service.

It presented no data as to its export traffic, which is of much less importance to it than the imports. Its choice of ports of export is dependent principally upon the availability of sailings and the total land cost to the foreign destination. In 1955 and 1956 the tonnage of imports through north Atlantic ports to the affected territory for which it was in a position to designate the port of entry, and which represents about 60 to 70 percent of its imports and at least 10 percent of all import tonnage here concerned, was as follows:

Port	1955 (Tons)	1956 (Tons)
Boston		339
New York[1]	22,246	26,598
Philadelphia[1]	54,797	14,951
Baltimore	294,515	195,805
Newport News	21,404	30,340
Total—	392,962	268,033

[1] Includes movements through other ports or subports in the same area.

The imports through Baltimore were principally ores, other than iron ore. Although the differentials are important to it from the standpoint of economy, many considerations other than the rail rates have affected the selection of the port used. Among those cited are the [fol. 5027] practices of private industry and established markets, such as the principal market for crude rubber, which is in New York; and the fact that at that port the best inspection service is available. Also, vessel operators have some measure of control over ports of call and will schedule only those at which there is adequate traffic. That such considerations often have controlling importance is

shown by the fact that the movement through Newport News was only about a tenth of that through Baltimore although the rates were the same, and that, except for a small volume through Boston in 1956, no northern tier port other than New York was used, although such ports had rates the same as or lower than those from New York.

Other grain shippers.—The Board of Trade of the City of Chicago, two large grain dealers with elevator capacity of 11,000,000 bushels in that city, and a cooperative association of country elevators in Iowa and Minnesota, which operates large elevators in Des Moines, Iowa, and Chicago, all of whom are interested in export movements of grain, presented evidence in support of the proposed equalization. On grain from Chicago, as well as from Duluth and Minneapolis, Minn., Peoria, St. Louis, and other midwestern markets, the rates to Baltimore and Hampton Roads and the Gulf ports are generally the same. Those to New York and Boston are 1.5 cents higher, equivalent to $9,000 on 1,000,000 bushels of wheat. Despite this difference, substantial volumes of grain from the affected territory move through Philadelphia and the northern tier ports. In the test year this movement was 30 percent of the total from that territory to the north Atlantic ports. Due to the keen competition in the marketing of grain and in the interest of an expanding export trade, these parties urge that equalization of the Gulf and north Atlantic ports be accomplished by applying the Baltimore basis of rates to all points.

Revenue-cost comparisons.—The respondents presented no cost evidence, except terminal costs of the New Haven [fol. 5028] at Boston as later indicated herein, in support of their claim that their proposed rates would be compensatory. Because those rates reflect relatively small reductions, a study of the costs was deemed unnecessary, nor did they consider such a study feasible or justified by the expense involved. They contend also that a showing of unit costs at New York would be irrelevant as they would be based on their presently-diminished traffic volume and would reflect large investments in port facilities made in times of heavier traffic, while their proposal, by attract-

ing increased volume, would reduce unit costs. Accordingly, to sustain their statutory burden of proof, they relied initially upon the minimal amounts of the proposed reductions and a prima facie showing of the revenues.

For example, the ton-mile revenues under the present and proposed rates from Chicago to New York are 8.18 and 8.09 cents for first class, and 1.15 and 1.03 cents for class 13, based on the docket 28300 short-line distances. The proposed rates to and from New York would yield average revenue of $19.20 per ton on import and $18 per ton on export traffic, as compared with averages of $8.12 and $9.38, respectively, to and from Baltimore. These average revenues reflect the differences in consist of the tonnage which flows through the ports, particularly the relatively large volume of bulk traffic through Baltimore and the preponderance of the high-grade general cargo through New York.

The protestants, relying upon *Boston & Maine Railroad* v. *United States,* 153 F. Supp. 952, in which the court held that we had discretion to reject a rate as unlawful which does not return out-of-pocket costs, undertook to show by revenue and cost relationships, determined as hereinafter described, that the proposed rates to and from New York would not be compensatory. Comparisons of the revenues on representative shipments of each commodity which [fol. 5029] moved in volume of 1,000 tons or more annually to or from that port in the test year, with estimated out-of-pocket costs of handling as of January 1, 1958, obtained as hereinafter explained, show average ratios of cost to revenues for the 174 carloads of import traffic of 111.6 percent, and for the 363 carloads of export traffic of 108.9 percent. The respondents agree that such traffic was representative of that moving through the port as to consist, interior destinations, and average loadings. However, as the protestants' showing is limited to cost for general cargo handled by the predominant or normal method at New York, no revenues were shown and no costs determined for bulk commodities handled by direct transfer, such as grain and ore which are transferred by special facilities at southern tier ports.

The cost-revenue ratios on individual shipments vary widely; for example, on imports as between commodities, from 78.3 percent on pig tin to Chicago to 158.8 percent on canned meats to Cleveland; and on exports, from 63.7 percent on cash registers from Dayton, Ohio, to 195.4 percent on salt from Manistee, Mich.

The cost evidence.—The protestants show their costs of performing the service to and from the southern tier ports and New York and certain factors of the costs to and from Boston. Discussion of such evidence will relate mainly to the New York costs. The out-of-pocket costs consist of inland terminal costs, line-haul costs, and port terminal costs. The inland terminal and line-haul costs were obtained by use of Rail Form A average unit costs for class I railroads in the eastern district as a group, based on expenses and statistics of the year 1955, eliminating expenses inapplicable to this traffic and also loss and damage expense. These were adjusted to reflect the wage and price level of January 1, 1958, a factor of 13 percent circuity to cover movements over actual routes used, and a return of 4 percent on investment after Federal income taxes.

[fol. 5030] The parties are in substantial agreement as to the correctness of data for these two elements of cost. The inland terminal cost used is the same for traffic to or from any of the ports. The line-haul average costs, which reflect differences in average distances to and from the several ports, are higher than those to or from Baltimore by the following amounts per car and per 100 pounds, respectively; Philadelphia, $14.80 and 2.7 cents; New York, $30.22 and 5.5 cents; and Boston $63.29 and 11.4 cents.

The principal area of controversy concerns the port terminal costs, especially those for the marine operations at New York, which the respondents and the Authority contend are inflated. As stated, the respondents presented no cost data and refused to join the protestants in developing them for all railroads which serve New York. They sought, however, by rebuttal evidence, to adjust and restate the protestants' costs to and from New York, thus obtaining a lower level of such costs.

The peculiar methods used in handling most of the import-export traffic at New York have been described. Typical elements of these costs include the expense of switching between train yards and the float bridges or lighterage piers, station service, float-bridge service, and water operations. Freight trucked in lieu of lighterage, for example, crosses the float bridges, is carfloated across the Hudson River, receives pier-station handling on Manhattan Island, and is trucked thence to the steamship pier. As the respondents' records of expenses pertaining to their operation at New York were not made available to the protestants, the latter relied upon special studies of their own September 1956 operations at the port, exclusive of direct transfer between car and ship, from which they developed a weighted-average cost for the Pennsylvania, and for the Baltimore & Ohio and the Central of New Jersey which pool their New York harbor operations. As shown [fol. 5031] in appendix F, these carriers handled about one-third of the considered traffic to and from the port during the test year and consider their operations typical of all the New York harbor operations in handling foreign shipments. The respondents assert that they are not representative of those of the other New York lines, in that the proportion of the traffic handled by each of the four different methods of operation differs from those of the respondents, and the consist of commodities handled likewise varies. The following table shows the proportion of the traffic handled in September 1956 at New York which was transferred in each of the four types of terminal service:

Carrier	Lighterage (percent)	Car float (percent)	Trucking in lieu of lighterage (percent)	Direct (percent)
New York Central	51	5.5	13.4	30.1[1]
Lackawanna	93	0.9	6.1	0
Erie	80	11.7	8.3	0
New Haven	67.3	6.8	25.9	0
Pennsylvania	76.7	2.2	13.3	7.8
B & O-C.N.J.	40.1	0.2	9.9	49.8

[1] Import tonnage exclusively.

No data were reported by the Lehigh Valley, but its witness referred to 4 percent of its traffic as being handled directly between ship and shore. As the table shows, the preponderance of the export-import traffic is handled in lighterage service. Lighters are also used in the delivery of domestic freight, particularly bulk cement by the New York Central and the Central of New Jersey. The loading of cement averaged 350 tons per lighter, as compared with about 60 tons for export-import freight.

The protestants' study includes no costs for the 13 percent of their traffic which was transferred directly, as they were concerned only with costs relating to the predominant types of transfer service used. This represented 83.4 percent of the September 1956 traffic of both the respondents and the protestants at New York harbor. The remainder [fol. 5032] or 16.6 percent, which was transferred directly, included 14,288 tons of export scrap iron handled by the Central of New Jersey, embraced in the 49.8 percent indicated in the table. This movement has since dried up. Excluding this tonnage, the remainder of that carrier's tonnage transferred directly was 28 percent of the total. As in the case of the New York Central's 30.1 percent, this consisted principally of bulk imports, such as ores, and some bananas transferred directly. The respondents criticize these harbor operating costs as not representative of the costs of their operations, but they did not support their position by evidence of specific differences in the cost of these operations.

Another area of disagreement is the degree in which the New York port costs, particularly those incident to the respondents' marine operations in the harbor, are variable with changes in traffic volume. The protestants contend that such operations, based on past experience, vary directly with fluctuations in port traffic volume and, as lighterage at New York is principally incurred on export-import freight, expenses thereof are in the nature of "solely related" expenses. The record shows that in 1956 the protestants' marine equipment in New York harbor was almost fully utilized. They accordingly treated their vessel and

lighterage pier operations, also trucking in lieu of lighterage, as 100 percent variable and included, as return on investment, 4 percent after income taxes of the entire investment in marine and other equipment and in lighterage piers. The respondents contend that, on the average, out-of-pocket portions of such expenses are about 60 percent of fully-distributed costs. For some of the accounts they use very low ratios, such as 10 percent for repair of floating equipment, a major item of the marine expense, based on the premise that an increase in their traffic can be accommodated by handling additional tonnage in their lighters [fol. 5033] and more cars on each car float. However, they treated investment in floating equipment as 100 percent variable, on the assumption that substantial increases in traffic would require adding more units "in the long term."

The record shows that, except in wartime, the loading of lighters, the number of lighters per tug-tow, and the number of cars per carfloat-day have not varied substantially with changes in traffic volume, and that the service requirements of customers, the nature of the operations, and scheduled deliveries to meet ship loading or sailing schedules, limit the loading that can be handled in a given lighter movement, which averaged about 60 tons for the New York Central.

The respondents applied a variable portion of 50 percent to a second large item, operating floating equipment, two-thirds of which is wages of tug and barge crews. These expenses relate to the actual operation of this equipment, and from the long-term standpoint, such as here where rate relationships of a permanent nature are contemplated, they would be almost 100 percent variable with changes in traffic volume.

The respondents' revision of the protestants' costs, achieved principally by use of a minimum out-of-pocket level for the principal port costs, shows that for the general-cargo traffic as a group the overall costs would be about 81 percent of the revenue, contrasted with costs computed by the protestants, based on a solely-related level of port

costs, about 9 percent higher than the revenue. In our opinion, the out-of-pocket ratio of these port expenses used by the respondents is too low and that of the protestants is too high. We conclude that the traditional estimated level of 80 percent of the fully-distributed costs should be used to ascertain the out-of-pocket costs of moving this traffic. [fol. 5034] After restatement of the protestants' costs to reflect port costs computed on that basis, and giving effect to adjustments in other disputed but less important items of those costs, application of the resulting costs to the New York traffic indicates that the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs. However, a presentation of costs adequate to determine whether the proposed rates would be reasonably compensatory should embrace all types of traffic which those rates are expected to attract, and should reflect the costs of the specific methods by which they would be handled. It may be that other traffic would be forced to absorb a larger portion of the constant costs in order to maintain a national transportation system conforming to the ultimate objectives of the national transportation policy.

Port costs.—An analysis of the cost data of record was made to show the relations between the terminal costs of the ports. It reveals the weighted average of the full port costs of handling export-import traffic (box cars-general cargo) of the several protestant railroads at each of the ports served by them, based on traffic handled in September 1956, with expenses adjusted to the July 1, 1957 level, and similar costs for the New Haven at Boston based on traffic [fol. 5035] and expenses in May 1957. The costs associated with the number of cars handled and those associated with the tons handled are as follows:

Port Costs, Export-Import (Box Cars—General Cargo)

Items	New York	Boston	Baltimore	Philadelphia
Costs per car:				
Switching (including some station expenses)	$28.05	$26.03	$20.19	$22.37
Float bridge, car float, lighterage bureau	9.31			
Car detention		12.24		
Total cost per car	$37.36	$38.27	$20.19	$22.37
Costs per ton:				
Platform handling (including some station expenses)	4.58	3.22	2.76	3.58
Lighterage and trucking in lieu of lighterage	4.99		.35	
Total cost per ton	$ 9.57	$ 3.22	$ 3.11	$ 3.58

Other considerations.—In the test year about 55 percent of protestants' export-import traffic of the commodities embraced herein through the southern tier ports was to and from the affected territory, and 63 percent of that traffic between Baltimore and Hampton Roads and the interior moved to and from that territory, while only about 40 percent of the export-import traffic of the New York Central originated or terminated in that territory. Data from which a comparable ratio for other respondents serving New York might be determined were not supplied. The relatively small proportion of Boston's traffic which moves to and from that territory has already been shown. Thus, it is apparent that the southern tier ports, especially Baltimore

and Hampton Roads, are much more dependent upon such traffic and have far less support in the hinterlands which they serve than the northern tier ports served by the respondents.

Data compiled from the traffic study show that of the considered traffic which moved through New York and the southern tier ports, over 50 export commodities and about the same number of import articles moved exclusively [fol. 5036] through New York; that over 90 percent of the following exports moved through that port: Flour, ammunition, fresh meats, automobiles and trucks, soybean oil, agricultural implements, glassware, paint, and forwarder traffic. From 70 to 100 percent of the following imports, representing the more substantial tonnage volumes, also moved through New York: Copper, coffee, waste materials, metals and alloys, crude rubber, agricultural products, and lead and zinc. The volume of each of the commodities named exceeded 10,000 tons.

The protestant railroads stress the superiority of the facilities available and the services provided at New York, as compared with the southern tier ports, and which they contend increase the value of the transportation service at New York to such an extent as to require differentials much greater than the present ones. The potency of these factors is emphasized particularly as it bears upon the validity of the claim of competitive need, relied upon by the respondents. The protestants and their supporting port interests take the position that as the southern tier ports afford no service advantages comparable to those provided by New York, their only competitive appeal is in the rate differential, and if that were lost there would soon be no incentive to use those ports.

The principal, and in some instances the only, reason given by one of the respondents' traffic officers, and by the shippers and receivers in the affected territory who testified in support of equalization, for routing traffic through the southern tier ports rather than the port of New York, is the lower freight rates which the differentials provide. A large exporter of grain operating elevators at Albany and Norfolk, who testified in support of the respondents, at-

tributed the much greater volume of grain exported through Baltimore and the increased volume through Norfolk to their freight rate advantage, as by far the largest single factor.

[fol. 5037] Some of these shippers who use the southern tier ports stress that rate equalization would provide them relief from congestion and embargoes at those ports, excessive demurrage charges, delays in unloading, and difficulty in scheduling rapid transportation and maintaining an even flow of traffc from their plants. There is no evidence that such situations have obtained or are now present at the southern tier ports. To the extent that they may occur, particularly where they result in inferior service at those ports, they would supply an added incentive, in the event of rate equalization, for a shift in tonnage to the northern tier ports, especially New York.

Batimore interests contend that with rate parity that port would lose a large part of its general cargo. They rely on the detailed evidence of New York's superior steamship service and port services and facilities, which the record shows attract substantial traffic through New York en route to or from areas in which the southern tier ports are located, although the rail rates to New York in most instances exceed those to the southern tier ports. As to bulk commodities, Baltimore contends that the effect of the loss of the differential would be less immediate but equally certain. Its excellent facilities for handling this traffic were developed primarily by the railroads in reliance upon their use by exporters of grain and importers of ore, because of the saving in inland freight. As bulk commodities, because of their low value, are peculiarly sensitive to transportation cost, the differential has greater influence on their movement than on general cargo. This movement is generally in regularly-scheduled vessels, at equalized ocean rates, and in shipper-owned vessels. The variety of general cargo concentrated in New York has drawn such vessels to that port. With further concentration of such cargo resulting from rate parity, the steamship lines desiring diversified [fol. 5038] cargoes would use their influence to attract more bulk cargo to provide balanced ladings at that port, with

resulting diversion of bulk cargo on which Baltimore is heavily dependent.

About 90 per cent of Baltimore's water-borne commerce consists of bulk commodities such as ores, petroleum, raw sugar, gypsum rock, and grain. It is interested in increasing its volume of general cargo so that it may attract more liner-type vessels, and provide a better balance of tonnage and greater revenue for the port. The general cargo moving by rail to and from the affected territory, which in 1955 aggregated about 1.1 million tons, was only about one-fourth of the domestic and foreign general cargo passing through the port. It has had difficulty even with a rate advantage in building up its foreign trade of this type. It fears that the volume would diminish, with resulting curtailment of steamship service, if New York were accorded a parity of rates with the southern tier ports. If much of this traffic were lost because of rate parity, and the St. Lawrence Seaway should attract a substantial part of its bulk cargo tonnage, it fears that its port revenues and employment in the port area would suffer. Although the competition of the Seaway, especially for export grain, is relied upon by the respondents and the Authority to support equalization, Baltimore emphasizes that since bulk commodities are estimated to provide 80 percent of the seaway traffic, New York, predominantly a general-cargo port, would be affected much less than Baltimore, which is primarily a bulk-cargo port.

Shipper evidence presented by the protestants shows a decided preference for the port of New York. A number of manufacturers of a variety of products at points in Maryland in or near Baltimore make a substantial portion of their export shipments through New York, in some instances as high as 95 percent. Most of these move by truck at rates as much as 79 cents higher than to Baltimore, generally at [fol. 5039] the direction of the foreign purchaser or a foreign freight forwarder at New York whom he designates, of brokers at New York, of the domestic corporations who consolidate the shipments at the port for movement to their foreign bases, or of the United States Government when it controls the transportation.

A freight forwarder at Baltimore who specializes in moving export shipments, providing a carloading service from differential territory, and who is the only forwarder loading regularly-scheduled export cars to Baltimore, loads such cars at Chicago, Indianapolis, and three Ohio cities. Similar service is provided by other forwarders to other ports, including New York and New Orleans. During the test year 5,242 tons, or slightly more than 10 percent of the volume to New York, moved to Baltimore. When solicited for this traffic, shippers give numerous reasons for preferring New York, the chief of which is the advantage of more frequent direct sailings to more foreign ports, or the directions of their customers who maintain export offices in New York from which they can best control the movement of the freight and its consolidation at the port. Without the saving which the present rates to Baltimore afford the shipper, it would be impossible to obtain sufficient traffic to load cars for Baltimore, and the forwarder fears that it would be compelled to obtain authority to operate to New York or retire from the business.

Truckload rates from the affected territory on numerous articles exported or imported through north Atlantic ports do not reflect recognized differentials as do the rail rates. The differences in such rates to or from these ports are greater than the differentials in the corresponding rail rates. For example, truckload rates on brass or copper ingots to Cleveland are 85 cents from Baltimore, 88 cents from Philadelphia, and 93 cents from New York.

To show that New York's competitive position is far superior to that of Hampton Roads, a study was made by the Chesapeake & Ohio for the year ended June 30, 1957, [fol. 5040] which disclosed that substantial tonnages from the affected territory moved to New York notwithstanding the lower rates to the southern tier ports. For example, of 5,870 carloads originated by the Chesapeake & Ohio in that territory during this period and exported either through Hampton Roads or New York, 4,654 carloads were exported through New York. Thus, notwithstanding its 3-cent advantage this carrier was able to hold only one out of five carloads which it originated. In the same period it handled

for export through Hampton Roads only 561 carloads originated by the New York Central and 40 carloads originated by the Erie, which were turned over to it by those respondents.

To ascertain the effect of the 3-cent differential a study was made of manufactured iron and steel traffic for export from the Pittsburgh district, from which the rates to New York and Hampton Roads are the same. During August and October 1955 and April, May, and June 1956, 178,241 tons were moved from that district through New York by five respondents and only 545 tons moved through Newport News. During the test year the movement from the affected territory to New York of this commodity aggregated 580,073 tons, or over 100 times the 5,416 tons handled through Hampton Roads and over 60 percent more than through Baltimore.

A parity of rates to Hampton Roads and New York also obtains on export traffic from the Province of Ontario, Canada, served by the Chesapeake & Ohio and the New York Central. In the year ended with June 1957, only 14 carloads moved through Hampton Roads from origins on the Chesapeake & Ohio in that Province, as compared with 553 carloads from those origins to New York. The Chesapeake & Ohio was unable to attract a single carload originated by the New York Central in that territory for movement to Newport News.

A meat packer operating plants at Madison, Wis., and Davenport, Iowa, exports lard, pork, and pork products over [fol. 5041] routes through Chicago and the north Atlantic ports in competition with other slaughterers at Chicago, St. Louis, East St. Louis, and Milwaukee. No reductions are proposed in the rates from Madison or Davenport. As it must absorb the difference in rates from its plants over those from Chicago in making such export sales, it objects to the substantial increase in the rate spreads, in some instances more than double the present, which would result from the proposed reductions from Chicago. It contends that undue prejudice to it would result, and states that under the proposed adjustment its only alternative would be to move more of its export traffic through Gulf ports.

Discussion and Conclusions

The port rates proposed to be reduced are part of a rate structure established by voluntary agreement of the eastern railroads more than 80 years ago. It was the purpose of that structure, as expressed in *In the Matter of Differential Rates, supra,* pages 13 and 62, that "these ports shall all be kept open * * * for export business upon such terms that each one may fairly compete for it." This purpose was reaffirmed in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co., supra,* at page 162, from which we have previously quoted herein. As was there said in prescribing reasonable and non-prejudicial port rates to and from Albany, this adjustment was not a loose aggregation of separately-established rates, but a single entity composed of interrelated rates bound together by the port differentials. To the extent that these differentials are effective in controlling the movement of traffic through particular ports, their impact is registered in the tangible evidence of the tonnage data. But as such data also reflect the influence of numerous other factors, including the rail service, the various port services, and the ocean service beyond, which may counteract or supplement the effect of the differentials, the [fol. 5042] complexity inherent in measuring or evaluating that impact is apparent. However, it is equally apparent that as the influence of all these factors has been registered, a change in the differentials could be expected to cause a shift in a substantial volume of the traffic.

The primary purpose of the proposed adjustment, as the respondents and the principal northern tier port interests emphasize, is to re-establish the equality of through ocean-rail charges which existed prior to the ocean-rate equalization in 1935. The respondents claim that as a result of such equalization the present unequal through charges have caused traffic diversion from the northern tier ports. However, the volume of foreign traffic having its origin or destination in the affected territory which those ports attracted prior to the equalization of the ocean rates is not revealed. Consequently, we are unable to find support for the assertion that the disparity in through charges thus created has

diverted traffic from the northern tier ports, to the disadvantage of the respondents.

Some of these ports have at various times sought to alter the differentials, but prior to this proceeding no carrier or group of carriers has done so. While circumstances warranting or requiring some modification of the present adjustment may arise, the burden of establishing the need for such a change rests upon the proponents thereof. Of controlling importance in this connection are the provisions of sections 1 and 3(1) relating to reasonableness and to undue preference or advantage of ports or port districts. Also, section 15a(2), among other things, requires us to consider the effect of rates on the movement of traffic, and the national transportation policy stresses the importance of maintaining a national transportation system adequate for commerce and the national defense.

In *Export Grain from Buffalo to New York, supra,* we found "abundant evidence of the dominant position" of the [fol. 5043] southern tier ports and a clear indication that New York, particularly, had suffered a substantial loss of tonnage in its competition for the ex-lake grain traffic. By contrast, the claims made here by the respondents and the northern tier ports, of diminishing volume of their subject traffic since equalization of the ocean rates was effected, and that these traffic losses are attributable to the differentials, are not supported by impressive evidence. As to Boston, which argues that its port and the respondents which serve it have been handicapped since equalization of the ocean rates and seeks to restore the competitive situation which the differential adjustment was designed to create, the evidence of supporting data is even more meager than for New York.

The present differentials are smaller than they would be if allowed to be set by competitive factors, and also much smaller, relatively, than when initially established. As hereinbefore mentioned, protestant railroads have filed a counter proposal, in the event that the respondents' rates are found lawful; they propose to reduce their rates between southern tier ports and the same interior territory by the same amounts as proposed by the respondents. The greater dis-

tance of the northern tier ports from the affected territory, and the higher costs of service to and from those ports, are firmly established. Thus, approval of respondents' proposed rates would require alternate approval of protestants' proposed rates. This might result in the rates gravitating to their lowest possible level and in a needless dissipation of carrier revenues. We have been given the power to fix rates, among other reasons, for the purpose of preventing destructive competition and promoting the financial stability of the regulated carriers. Failure to observe our obligations in the exercise of that power would find us [fol. 5044] remiss in our duties. The present differentials have long served to retain a reasonable competitive relationship between the principal port groups and should be maintained.

The evidence upon which the respondents rely is not convincing that their proposed rates are necessary to afford them and the northern tier ports, as a group, the opportunity to compete for a larger proportionate share of the traffic here considered. On the contrary, the record is clear that New York continues to attract more of the highly desirable general-cargo tonnage so vital to its port economy than all of the other north Atlantic ports combined; that to obtain a volume of traffic which will support a much lower level of port activity and range of shipping services than New York, the southern tier ports have been depending heavily on bulk-cargo tonnage; and that, considering the volume and character of the traffic disclosed by the traffic study, and other evidence of circumstances which induce or deter the flow of the subject traffic, undue diversion from those ports to New York, at least of most types of that traffic, would result from the proposed equalization. The comprehensive showing in that study strongly refutes the claim of the respondents and their supporting port interests that such equalization is required to enable them to meet the competition of the southern tier ports and to effect a reasonable and nonpreferential rate relationship as between the opposing port groups.

We find that the respondents' proposed rates are not shown to be reasonably related to the present rates on like

traffic between the same interior points and the southern tier ports, and that the proposed rates would result in undue preference of and advantage to the northern tier ports as a group and in undue prejudice and disadvantage to the southern tier ports. We further find that the proposed [fol. 5045] rates of the protestant railroads are not shown to be just and reasonable. An order will be entered requiring cancellation of the suspended schedules, denying the fourth-section application, and discontinuing the proceedings.

COMMISSIONER FREAS, whom COMMISSIONER MCPHERSON joins, concurring in the result:

I agree that the statutory burden of proving the proposed rates just and reasonable and of justifying the sought fourth-section departure has not been met by any of the proponents. It follows that the proposed rates should therefore be ordered canceled. This, however, is the extent of the finding the record, in my opinion, justified and all that is necessary to the disposition of the proceeding.

COMMISSIONER WEBB, dissenting:

For 83 years railroads have been permitted to establish inland rates which equalize rail-ocean and ocean-rail rates on export and import traffic moving through the North Atlantic ports between Central territory and foreign ports. That policy of equalization, by preventing the growth of monopolies based on geographical advantages, has benefited railroads, shippers, ports, steamship operators, and the general public by insuring a free flow of commerce through as wide a range of ports as practicable. A policy of rate-making which has served so well the needs of foreign commerce should not be repudiated except for compelling reasons.

[fol. 5046] From 1877 to 1935 rail rates to and from New York at levels generally 2 or 3 cents per 100 pounds higher than to and from the southern tier ports were required by the policy of rate equalization. The inland rate differentials compensated for generally higher ocean rates to and from the southern tier ports. Ocean rates were not fully equal-

ized to all the North Atlantic ports until 1935. Beginning in 1935, therefore, the higher rail rates to and from New York and Boston, which the respondent carriers serving those ports seek to eliminate in this proceeding, were either outmoded or the then 58 year old policy of rate equality had suddenly become unsound.

After 1935, the respondents took no immediate action to remove their outmoded rate handicap. However, during World War II and in the preceding period of aid to our prospective allies, a large volume of traffic moved through New York in spite of that port's rate disadvantage simply because New York was the only port then capable of handling the volume of emergency shipments involved. An attempt by the Port of New York Authority to eliminate the rail differential on ex-lake grain was defeated by the Commission. *Port of New York Authority* v. *Baltimore & O. R. Co.*, 248 I.C.C. 165 (1941). Rail-ocean and ocean-rail rate parity to and from the North Atlantic ports has generally been approved, however, in cases where parity was proposed by the carriers involved. Cf. *Export Grain from Buffalo to New York*, 278 I.C.C. 31, 292 I.C.C. 647 (1954); *Iron Ore from Eastern Ports to C.F.A. Points*, 291 I.C.C. 527, 299 I.C.C. 195 (1956) (reopened and now pending); *Coal, Clearfield Group to Philadelphia for Export*, 308 I.C.C. 425 (1959).

There is a fundamental difference between action by the Commission or by port interests to compel equalization and voluntary action by carriers to establish it. See *New York Central R. Co.* v. *United States*, 99 F. Supp. 394, 398 (1951), [fol. 5047] aff'd per curiam, *Interstate Commerce Commission* v. *New York Central R. Co.*, 342 U.S. 890. The Commission has often recognized that carriers may make voluntary rate adjustments which the Commission could not require. This is not a complaint filed by port interests under section 3(1) of the Act. The respondent carriers are merely seeking to reinstate a ratemaking policy voluntarily established 83 years ago—a policy which lapsed when ocean rates were equalized around 1935 without the corresponding adjustment of rail rates for which Commission approval is now sought. The burden of proving the lawfulness of a proposal which conforms to the traditional rule

of rate equalization should be lighter than the burden of proof required to sustain a complaint which seeks to carve out an exception to the rule.

As pointed out by the Commission in *Chamber of Commerce of N.Y.* v. *N.Y.C. & H.R.R.R. Co.*, 24 I.C.C. 55, (at p. 69):

> The original agreement [of 1877] for differentials was based on the fact that the ocean rates for freights to and from foreign markets were less from and to New York than from and to the other ports, and the effort was to equalize the entire through charge via the several ports.

In 1882 the Thurman Advisory Commission was created by some of the railroads involved to investigate and report upon the differences in rates that should exist among the several Atlantic ports. The reasons given by the Advisory Commission for continuing the policy of equalization are just as valid today as they were three-quarters of a century ago. The Advisory Commission found that equalization aids the American producer by maximizing the number of buyers, carriers, and ports interested in his product; that, as to routes which are equally favorable, the bulk of the traffic will tend to move by the "through route" offering the lowest rate from interior points to European ports; that fixing rates upon the basis of distance from the port [fol. 5048] could not be achieved "except by subordinating competition altogether" to the distance principle; and that fixing differentials on the basis of relative cost of service would build up some cities and transportation companies upon the ruin of others. Accordingly, the Thurman Commission concluded that distance and cost of service considerations "are subordinate to the great principle which compels the carriers of property competing between the same points and offering equal facilities to their customers to make the same rates."

The "great principle" of rate equalization has proved to be as sound in practice as the Thurman Advisory Commission found it to be in theory. Shippers have had additional ports available in time of strike or congestion. Because of

the flexibility provided by rate equalization shippers have been able to avoid delays in unloading, to minimize demurrage, and to schedule export and import shipments without bunching of cars at origin or destination. Railroads and ports have competed for traffic on the basis of service instead of monopolizing portions of the traffic by reason of cost and distance advantages. Operators of ocean vessels have been able to put into any North Atlantic port knowing that the total cost of transportation to the consignee would be the same.

Another advantage of rate equalization is that the Interstate Commerce Commission has less occasion to apportion traffic among the ports involved. Where, as here, the required rate differential is not justified solely on distance or cost of service considerations, apportionment of traffic is inherent in the fixing of the differential. For example, if the rate handicap against New York and the other northern tier ports were increased by 50 percent [fol. 5049] even less traffic would move through those ports, whereas a reduction of the differential by 50 percent would increase their tonnage. In forcing continuance of the rate handicap, the majority has necessarily determined that each of the carriers and ports involved is presently enjoying a fair share of the available traffic.

In allocating traffic between ports and carriers the Commission's expertise should not lightly be presumed. Under certain circumstances, apportionment of traffic is required by statute, but unless the duty of determining fair shares is unavoidable, it is far better to let the flow of traffic be determined in the transportation marketplace. If the policy of rate equalization were followed in this proceeding, the Commission would not be required to decide, *sub silentio*, how much of what kind of traffic should move through the various ports.

Adherence to the great principle of rate equalization requires disapproval of the retaliatory reductions proposed by the carriers serving the ports of Philadelphia, Baltimore, and Hampton Roads, their cost and distance advantages to the contrary notwithstanding. If the dire predictions of these carriers and ports should begin to materialize in the wake of rate equalization, a remedy is

provided by section 3(1) of the Act. In acting upon such a complaint, the Commission would be obliged to determine what volume of traffic is required to sustain the life of the port. However, no such determination should be made on this record or on any other record developed prior to the movement of traffic under rate parity. Rate equalization is the rule. Exceptions to the rule should not be prescribed on the basis of conjectural harm.

Even if it were proper to apportion traffic in this proceeding, the allocation effected by the majority seems in-[fol. 5050] equitable. As shown by Appendix F (which does not include substantial tonnages of export coal and import iron ore moving through the southern tier ports), rail exports from the affected territory through New York amounted to only 29.3 percent of the total and imports through New York to the affected territory amounted to only 23.1 percent of the total. It is no answer to say that New York continues to handle over 60 percent of the so-called "highly desirable general-cargo tonnage." The report recognizes that the exportation and importation of bulk commodities is increasing while "the movement of United States manufactures to foreign markets has been steadily declining." Moreover, the majority recognizes that the general cargo which moves predominantly through the port of New York is the most expensive type of traffic to handle and, in fact, that such traffic provides a return which is only barely compensatory.

These conclusions appear to restrict New York and the other northern tier ports to a shrinking class of traffic which is the most expensive to handle. Bulk commodities do not move freely against a rate differential. Railroads are volume carriers. To deny the respondents an opportunity to participate in the movement of bulk cargoes is a denial of their most important inherent advantage. Furthermore, any prospect of relief in the future seems remote. If, as the majority finds, the proposed adjustment would unduly prefer Boston, Portland, and Albany, which collectively handle only 6.9 percent of the involved exports and only 1.1 percent of the affected imports, the rate handicap of New York must be regarded as relatively permanent in nature.

The majority also finds that the reduction proposed by the respondents to achieve rate equalization has not been [fol. 5051] shown to be compensatory. The reductions are minimal, amounting to about one-tenth of a cent in ton-mile revenue. Since publication, the proposed equalizing rates were subjected not only to authorized general increases to cover increased costs, but also to an additional charge of 6 cents per 100 pounds on water-borne traffic approved in Ex Parte No. 212, 304 I.C.C. 289 (1958). To require the respondents to submit a cost study embracing the whole range of export-import traffic from and to all the points involved in this proceeding would impose upon them a difficult, if not impossible, assignment.

Certain protestant rail lines which serve the port of New York attempted by a study of revenues on representative shipments to show that the proposed rates were not compensatory. This study did not include traffic handled by the least expensive means, that is, traffic transferred direct between car and ship and not handled in lighterage, car float, or trucking in lieu of lighterage service. In September 1956, respondent New York Central transferred 30 percent of its traffic at New York direct from car to ship. If the cost evidence had included "heavy-moving bulk commodities" transferred directly between ship and shore and which the respondents hope to attract by rate equalization, it is reasonable to assume that the showing of compensativity would be enhanced rather than diminished.

After restating protestants' cost figures and without making any allowance for any increase in bulk commodity traffic, the majority reaches the following conclusion:

> After restatement of the protestants' costs to reflect port costs computed on that basis, and giving effect to adjustments in other disputed but less important items of those costs, application of the resulting costs to the New York traffic indicates that the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs. However, a presentation of costs adequate to determine [fol. 5052] whether the proposed rates would be reasonably compensatory should embrace all types of traf-

fic which those rates are expected to attract, and should reflect the costs of the specific methods by which they would be handled. It may be that other traffic would be forced to absorb a larger portion of the constant costs in order to maintain a national transportation system conforming to the ultimate objectives of the national transportation policy.

Included in the estimated out-of-pocket costs is a return of 4 percent on investment after Federal income taxes. None of the respondent railroads serving the port of New York had an average rate of return on investment of 4 percent for the years 1946-1957, inclusive. The record shows that for 1957 respondent Lehigh Valley had a return of .44 percent and respondent New Haven a return of .08 percent. Annual reports filed with the Interstate Commerce Commission show that respondent New York Central's rate of return on investment in 1958 was only .61 percent and that the New Haven failed to make any return at all on its investment in 1958 and 1959.

It is clear, therefore, that the proposed rates which are found to "equal or exceed by a small margin" the estimated out-of-pocket costs (which include a 4 percent return on investment after Federal income taxes) would not burden domestic traffic. Rather, the record shows that the proposed rates would make a far greater contribution to the total transporation burden than the rates applicable to other traffic.

Approval of the proposed rates would be consonant with the Commission's duty under the National Transportation Policy to "foster sound economic conditions in transportation and among the several carriers." The precarious financial condition of some of the respondent carriers is a matter of common knowledge. The principal lines serving [fol. 5053] Philadelphia and Baltimore also serve New York and they would, therefore, participate to some extent in the handling of increased tonnage through the port of New York. The relative prosperity of the railroads serving Hampton Roads is well known.

By inflexible adherence to cost accounting theory, rates yielding a 4 percent return on investment after Federal in-

come taxes can be found to be inadequately compensatory to carriers which have not enjoyed such a return for many years. Impressive support for such a conclusion may be found among practitioners of the science of cost accounting. It is their view that a return on investment and taxes and other than payroll should be included in railroad out-of-pocket costs because, over a long span of time, these items of expense are variable in terms of traffic volume. But even if the theoretical validity of this approach is conceded, the Commission should recognize that the survival or demise of some of the respondent carriers will be determined over a much shorter period of time than that posited by conventional rail cost analysis.

I would approve the proposed reduced rates to the extent indicated above and grant fourth section relief.

Comparison of Waterborne Foreign Commerce through United States and North Atlantic Ports, with that through New York.

(Millions of Net Tons)

	1935	Percent of U.S.	1946	Percent of U.S.	1955	Percent of U.S.
Imports	38.7		52.1		153.	
Exports	43.0		96.8		118.1	
Total, U.S.	81.7		148.9		271.1	
North Atlantic, total	35.0	42.8	69.9	46.9	158.1	58.3
New York, total	17.4	21.2	22.8	15.3	38.9	14.4
New York, percent of North Atlantic	49.7		32.6		24.6	
Imports (excluding petroleum and ores)	26.5		28.4		33.8	
Exports (excluding coal and grain)	33.3		51.2		52.4	
Total, U.S.	59.8	100.0	79.6	100.0	86.2	100.0
North Atlantic, total	23.8	40.0	24.5	30.8	29.2	33.9
New York, total	12.8	21.3	14.4	18.1	16.6	19.3
New York, percent of north Atlantic	53.4		58.7		56.9[1]	

[1] Percentage of north Atlantic general-cargo exports and imports increased from 58.7 percent in 1955 to 59.1 percent in 1956.

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Value of foreign trade (millions of dollars)

Year	Exports		Imports	
	New York	Baltimore	New York	Baltimore
1935	790	36	1,033	53
1945	4,020	499	1,477	113
1955	4,005	577	4,293	379

5054

[fol. 5054]

APPENDIX A TO REPORT

Ocean Borne General Cargo, 1956
Gross tons (thousands)

	Exports	Imports
North Atlantic:		
New York	6,397	6,495
Other North Atlantic	4,007	4,918
Total	10,404	11,413
South Atlantic:		
North Carolina	219	82
South Carolina	432	241
Georgia	441	365
Florida	995	1,360
Total	2,088	2,048
Gulf:		
Mobile	602	355
New Orleans	3,308	2,693
Sabine	885	87
Galveston	2,651	1,158
Laredo	409	30
Total	7,855	4,323
Pacific Coast:	4,870	3,865
Other	1,770	1,101
Total, United States	26,987	22,750

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Exports, carloads (Except Coal, Coke, and Grain)

Port	1939	1956	Percent 1956 of 1939
Boston	7,679	10,673	139
New York	127,020	184,543	145
Philadelphia	16,447	23,857	145
Baltimore	23,322	40,380	173
Hampton Roads	24,949	37,539	150
(1) North Atlantic, total	203,432	303,149	149
(2) South Atlantic and Gulf, total	171,410	289,087	169
Grand total	374,842	592,236	158

Exports, Excluding Coal and Grain
(Millions of Net Tons)

			North Atlantic Ports					
			New York		Northern Tier		Southern Tier	
	U.S. Ports Tons	N.A. Ports Tons	Tons	Percent of North Atlantic	Tons	Percent of North Atlantic	Tons	Percent of North Atlantic
1923	(1)	12.9	9.2	72	9.5	74	3.4	26
1946	51.2	14.5	8.5	59	8.9	61	5.6	39
1955	52.4	14.1	8.2	58	8.8	62	5.3	38

Imports, Excluding Petroleum and Iron Ore
(Millions of Net Tons)

1923	(2)	15.4	8.8	57	11.1	72	4.3	28
1946	28.4	12.8	6.2	49	7.4	58	5.3	42
1955	33.8	20.3	9.4	46	11.2	55	9.0	45

(1) 42.3 million tons in 1930.
(2) 26.6 million tons in 1930.

****

Imports, North Atlantic Ports, net tons
(exclusive of petroleum and ores)

Port	1955	1946
Boston	1,408,359	1,012,204
New York	8,434,065	5,890,592
Philadelphia	2,651,018	1,737,081
Baltimore	1,648,071	814,316
Hampton Roads	1,142,812	638,596
North Atlantic total -	15,660,246	10,265,704

Exports, North Atlantic Ports, net tons
(exclusive of coal, coke, and grain)

Boston	435,118	191,307
New York	8,178,436	8,507,145
Philadelphia	1,804,956	2,460,268
Baltimore	2,147,798	1,812,643
Hampton Roads	794,288	1,174,030
North Atlantic total -	13,544,621	14,273,485

[fol. 5056]

Ocean-borne Exports
(Millions of Gross Tons)

	United States		New York Custom District		
	Total	General Cargo	Total	General Cargo	Percent of U.S. General Cargo
1923	40.7	21.7	11.1	7.9	36.3
1946	64.2	26.2	11.9	9.9	37.7
1947	91.1	28.8	14.3	10.9	38.0
1948	66.8	22.0	11.4	8.1	36.8
1949	58.8	20.8	9.1	7.0	33.7
1950	39.1	17.0	6.6	5.1	29.9
1951	87.3	20.0	9.7	6.3	31.3
1952	76.1	18.1	7.8	5.7	31.7
1953	57.1	15.3	6.6	4.8	31.1
1954	57.0	18.4	6.6	4.9	26.8
1955	84.6	23.8	8.4	6.4	26.8
1956	113.0[1]	27.0	8.7	6.4	23.7

Ocean-borne Imports
(Millions of Gross Tons)

	United States		New York Custom District		
	Total	General Cargo	Total	General Cargo	Percent of U.S. General Cargo
1923	38.4	17.8	11.6	8.0	45.
1946	44.2	13.6	13.7	5.2	38.2
1947	51.2	14.3	14.5	5.1	35.3
1948	60.8	16.3	17.8	6.2	38.2
1949	58.9	16.7	18.3	5.8	34.6
1950	86.1	21.4	23.0	7.6	35.5
1951	91.0	20.7	22.8	7.1	34.5
1952	97.0	19.5	25.1	6.9	35.6
1953	108.0	21.2	26.2	7.3	34.4
1954	110.7	19.4	25.4	5.8	30.0
1955	130.2	22.3	27.3	6.4	28.6
1956	146.8[2]	22.8	27.5	6.5	28.5

[1]The increase in total exports of about 72 million tons since 1923 distributed roughly was as follows (in millions of tons): Coal 42; grain 14; tanker cargo (petroleum, coal tar products, and molasses) 4; other minerals (sulphur, phosphate, iron ore) 4; foreign aid 3; and general cargo 5.

[2]The increase in total United States imports of 108 million tons since 1923, consisted of the following (in millions of tons): Tanker cargo (mainly residual fuel oil) 66; bulk ores (iron, manganese, chrome, ilmenite, bauxite, copper, lead) 34; other minerals (clays, gypsum, nitrates), 3; and general cargo, 5.

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~~I. & S. Docket No. 6619~~

Rail Transportation of Foreign Commerce Between
U.S. North Atlantic Ports and Affected Territory.

August 1955 - July 1956

	Northern Tier		Southern Tier	
IMPORTS	(Net tons)	Percent	(Net tons)	Percent
Products of Agriculture	225,626	33.3	84,268	4.0
Animals and Products	19,597	2.9	4,873	0.3
Products of Mines[1]	41,331	6.1	1,622,761	76.5
Products of Forests	13,100	1.9	41,570	1.9
Manufactures & Miscellaneous	376,672	55.6	368,350	17.3
Forwarder Traffic	130	0.2		
Total Carload Traffic	676,456	100.0	2,121,822	100.0
Percent of North Atlantic	24.2 (52.9)[2]		75.8 (47.1)[2]	

[1]Exclusive of petroleum and iron ore and concentrates.

[2]Exclusive of bulk ores.

EXPORTS				
Products of Agriculture	868,000	29.3	3,993,051	59.5
Animals and Products	124,182	4.2	87,524	2.6
Products of Mines[3]	4,582	0.1	19,213	0.3
Products of Forests	3,310	0.1	2,605	0.1
Manufactures & Miscellaneous	1,913,481	64.6	1,099,690	36.8
Forwarder Traffic	50,599	1.7	5,242	0.7
Total Carload Traffic	2,964,154	100.0	5,207,325	100.0
Percent of North Atlantic	36.3 (62.7)[4]		63.7 (37.3)[4]	

[3]Exclusive of coal.

[4]Exclusive of grain.

5058

[fol. 5058]

APPENDIX E TO REPORT

3819

Rail Transportation of Exports from Affected Territory (1955-56)

To	Total (net tons)	Total Percent of N.A.	Grain (net tons)	Grain Percent of N.A.	Other Traffic (net tons)	Other Traffic Percent of N.A.
New York						
Respondents	1,642,349		154,125		1,488,224	
Protestants	750,696		49,869		700,827	
	2,393,045	29.3	203,994	4.4	2,189,051	62.7
Boston	361,772	4.4	358,516	7.7	3,256	.1
Portland	68,192	.8	68,192	1.5	None	
Albany	141,145	1.7	141,000	3.0	145	.0
Total, northern tier	2,964,154	36.3	771,702	16.6	2,192,452	62.8
Baltimore	3,303,499	40.4	2,339,309	50.	964,190	27.6
Philadelphia	854,809	10.6	705,578	15.1	149,231	4.3
Hampton Roads	1,049,017	12.9	859,191	18.4	189,826	5.4
Total, southern tier	5,207,325	63.7	3,904,078	83.5	1,303,247	37.3
		100		100		100

Rail Transportation of Imports from Affected Territory (1955-56)

From	Total (net tons)	Total	Bulk Ores[1] (net tons)	Bulk Ores[1]	Other Traffic (net tons)	Other Traffic
New York						
Respondents	391,979		27,790		364,189	
Protestants	253,813		2,182		251,631	
	645,792	23.1	29,972	1.9	615,820	50.4
Boston	17,739	0.6	None		17,739	1.5
Portland	12,382	0.4	None		12,382	1.0
Albany	543	0.1	None		543	
Total, northern tier	676,456	24.2	29,972	1.9	646,484	52.9
Baltimore	1,644,844	58.8	1,349,946	85.1	294,898	24.1
Philadelphia	184,759	6.6	59,490	3.8	125,269	10.25
Hampton Roads	292,219	10.4	136,046	8.6	156,173	12.8
Total, southern tier	2,121,822	75.8	1,545,482	98.1	576,340	47.1
		100		100		100

[1]Other than iron ore and concentrates.

5059

[fol. 5060]

ORDER

BEFORE THE INTERSTATE COMMERCE COMMISSION,
5th day of December, A. D. 1960.

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth-Section Application No. 32204

Import and Export Rates From and To
North Atlantic Ports

It appearing, That by order dated July 6, 1956, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and of the relief sought in the fourth section application filed therewith, and suspended the operation of the schedules until February 9, 1957, and that their operation has been voluntarily postponed by the respondents until the disposition of these proceedings;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the said schedules, on or before January 23, 1961, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed under section 6 of the Interstate Commerce Act.

It is further ordered, That fourth-section application No. 32204 be, and it is hereby, denied; and that these proceedings be, and they are hereby, discontinued.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 5061]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

ORDER, DATED MARCH 7, 1961 CORRECTING ONE OF THE FINDINGS IN REPORT OF DECEMBER 5, 1960

It appearing, That a report was adopted and an order entered in this proceeding on December 5, 1960, and that the attention of the Commission has been called to a sentence in the said report which is in error;

It further appearing, That the sentence on sheet 52 of the mimeographed report of December 5, 1960, reading: "None of the respondents has suggested a change in the rate relations as between the New England ports and New York" is incorrect, as certain New England respondents, as well as the Boston Port Authority, urged in these proceedings that the reduced rates proposed for Boston, Mass., were lawful and should be permitted to take effect regardless of the conclusion reached on the respondents' proposal with respect to the rates to or from New York, N. Y.; and this is made plain by a statement to the latter effect on sheet 51 of the mimeographed report. Accordingly, and for good cause appearing:

It is ordered, That the sentence above quoted, on sheet 52 of the aforesaid mimeographed report, be, and it is hereby, stricken from the report.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 5062]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

COMPLAINT—January 11, 1961
(Equitable Relief Sought)

I.

Plaintiff Boston and Maine Railroad is a consolidated railroad corporation organized and existing under the laws of the States of Massachusetts, Maine, New Hampshire and New York, and authorized to do business in the State of Vermont, with its principal office and place of business at 150 Causeway Street, Boston 14, Massachusetts. It is a common carrier of property by railroad subject to Part I of the Interstate Commerce Act (49 U. S. Code, Chapter 1), operating in each of the foregoing States. In connection with the lines of other railroads it offers a rail transportation service for the movement of import and export traffic between the port of Boston, Massachusetts, and points and places throughout the continental United States, including those in so-called Affected Territory.*

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* In its report dated December 5, 1960, referred to hereinafter, the Interstate Commerce Commission described Affected Territory as follows (sheet 3):

"The territory to and from which equalization of the northern tier ports with Baltimore is initially proposed is roughly that represented by central freight association territory, in-

[fol. 5063]

II.

Plaintiff The New York, New Haven and Hartford Railroad Company is a consolidated railroad corporation organized and existing under the laws of the States of Massachusetts, Rhode Island and Connecticut, and authorized to do business in the State of New York, with an office and place of business at South Terminal Station, Boston, Massachusetts. It is a common carrier of property by railroad subject to Part I of the Interstate Commerce Act (49 U. S. Code, Chapter 1), operating in each of the foregoing States. In connection with the lines of other railroads it offers a rail transportation service for the movement of import and export traffic between the port of Boston, Massachusetts, and points and places throughout the continental United States, including those in Affected Territory.

III.

This action is brought and jurisdiction is invoked under the provisions of Title 28, U. S. Code, sections 1336, 2284 and 2321 through 2325, inclusive, to enjoin, set aside, annul, and suspend an order of the Interstate Commerce Commission (hereinafter termed the "Commission") dated December 5, 1960, and served January 3, 1961, entered in its Investigation and Suspension Docket No. 6615, *Equalization of Rates at North Atlantic Ports*, and in Fourth Section Application No. 32204, *Import and Export Rates From and To North Atlantic Ports*. A copy of the Commission's report and order dated December 5, 1960, embracing both proceedings, is attached hereto and made a part hereof as Appendix A. The United States of America is made defendant herein

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cluding Illinois freight association territory and southern Wisconsin, hereinafter called the affected or differential territory. It includes territory on and west of a line extending from a point just west of Buffalo through Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof, certain points in Kentucky on the lines of The Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio."

under the authority of section 2322 of said Title 28, U. S. Code.

IV.

The venue of this action is in this Court pursuant to the provisions of Title 28, U. S. Code, section 1398, inasmuch as plaintiff Boston and Maine Railroad is incorporated in the Commonwealth of Massachusetts, and maintains its principal office in Boston, Massachusetts, within the jurisdiction of this Court.

V.

The Commission is an administrative tribunal of the United States created by the Act to regulate commerce, approved February 4, 1887, 24 Stat. 383, and the amendments thereto, Title 49, U. S. Code, Chapter 1, now known as [fol. 5064] the Interstate Commerce Act (herein termed the "Act"), with specifically vested powers and duties under said Act and the various acts that are amendatory thereof and supplemental thereto.

VI.

The aforesaid proceedings before the Commission commenced with the Commission's order directing the suspension and investigation of certain tariff schedules published by plaintiffs herein and their connecting carriers, including, among others, New York Central Railroad Company, The Delaware and Hudson Railroad Corporation, Erie Railroad Company, and The Delaware, Lackawanna and Western Railroad Company.* Said tariffs had been proposed to become effective July 10, 1956, and would have resulted generally in a reduction of 3 cents per hundredweight in railroad rates on import-export traffic between Boston, Massachusetts and Affected Territory. Identical reductions were simultaneously published by carriers serving the ports of Albany and New York, New York, and, in so far as export traffic is concerned, by carriers serving Portland, Maine.

* The latter two railroads have since merged and are now operated as the Erie-Lackawanna Railroad Company.

Plaintiff, Boston and Maine Railroad serves the port of Portland, Maine, and participated in the proposed reduction in export rates to that port.

At the time of said tariff publications, and continuing to the present time, rates between Boston, Albany and New York, on the one hand, and Affected Territory, on the other, were differentially higher than those between Affected Territory and the ports of Philadelphia, Baltimore and Hampton Roads. Rates via Portland are at the Baltimore level on import traffic and on the Boston level on export traffic.* Through no North Atlantic port are rail rates applicable to Affected Territory import-export traffic higher than those through the port of Boston. The proposed reduction in rates to and from Boston would place such rates on a parity with those existing at Baltimore and Hampton Roads, and, as to import traffic, with those at Portland.

Immediately following the publication of these proposed parity rates by carriers serving the ports of Boston, Portland, Albany and New York, competing carriers serving [fol. 5065] the more southerly ports of Philadelphia, Baltimore and Hampton Roads, published rates via those ports designed to restore the previously existing differentials. All of the foregoing tariffs, both those proposing elimination of and those seeking restoration of the rail rate differentials, were thereupon suspended by the Commission and its investigation instituted.

VII.

The present North Atlantic rail rate differentials were established in order to permit competition among the carriers serving the several ports by offsetting the ocean rate advantage which once prevailed at New York and ports north thereof, including the port of Boston. By means of the differential adjustment, the total transportation cost through all of the competing ports was equalized. However, since at least 1935, ocean rates have been identical to and

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* A summary of the present differentials is found at sheet 5 of Appendix A, attached hereto.

from all North Atlantic ports. In spite of that fact, the rail rate handicap at Boston and other northerly ports has remained unchanged. Thus, total transportation charges through Boston, New York and Albany have exceeded, since at least 1935, those via the more southerly ports to the extent of the rail rate differential.* The tariffs referred to herein were designed to permit plaintiffs to compete for Affected Territory traffic by eliminating the differential handicap at Boston, thereby equalizing once again total transportation costs through that port with total transportation costs through Baltimore and ports having the same level of rates as Baltimore.

VIII.

Hearings were held in connection with the tariff schedules under investigation, including those seeking the elimination of the differential at Boston, and on November 9, 1959, the Commission's hearing examiner issued his proposed report. Exceptions to said proposed report were filed by plaintiffs herein, among others, and oral argument was held before the Commission on May 24, 1960. On December 5, 1960 the Commission (Commissioner Webb dissenting, and Commissioners Freas and McPherson concurring) issued its report and order herein complained of. In said report and order the Commission required that these plaintiffs cancel said schedules on or before January 23, 1961, upon not less than one day's notice to the Commission and to the general public.

[fol. 5066] IX.

The Commission's findings in its decision dated December 5, 1960, show that:

(1) The present North Atlantic rail rate differential adjustment was designed to afford carriers serving the different ports competitive rates by equalizing total transportation charges through the several ports on traffic moving

* This situation also prevails as to export traffic through Portland, Maine.

between points in Affected Territory and foreign origins or destinations (sheets 7-8, 10).

(2) When the present rail rate differentials were established, ocean rates to and from Boston and New York were lower than those to and from Baltimore and Philadelphia. Accordingly, the differentials were designed, and their effect was, to offset the ocean-rate advantage of the more northerly ports, including the port of Boston (sheets 7-8).

(3) Commencing in the early twenties and extending to about 1935, ocean rates from and to the different North Atlantic ports became equalized. As a result, the sum of rail and ocean transportation charges through the port of Boston, served by plaintiffs herein, became higher than the sum of those charges through the southern tier ports of Philadelphia, Baltimore and Hampton Roads by an amount equal to the rail rate differentials (sheet 8).

(4) The elimination of the rate handicap at Boston, sought by plaintiffs herein, together with the proposed parity rates at Portland, Albany and New York, would provide an equality of total transportation charges, rail and ocean, between foreign countries and points in Affected Territory for the whole range of North Atlantic ports (sheet 8).

(5) The movement of Affected Territory traffic through Boston under the existing differentials is negligible. Carriers serving the port of Boston, including plaintiffs herein, participate in only 0.1% of the total of export rail traffic from Affected Territory through the several North Atlantic ports, excluding grain. By comparison, carriers serving the port of Baltimore participate in 27.6% of such traffic, those serving the port of Philadelphia in 4.3%, and those serving the Hampton Roads ports in 5.4%. Even including grain, Boston railroads carry but 4.4% of all Affected Territory exports, compared with 40.4% at Baltimore, 10.6% at Philadelphia and 12.9% at Hampton Roads (Appendix F).

[fol. 5067]

X.

Notwithstanding its findings referred to in paragraph IX (5) above, the Commission nevertheless found:

"As here presented the respondents' proposal contemplates equalization of the northern tier ports as a group with Baltimore." (sheets 51-52)

Having thus determined to treat the proposed rates at Boston, Portland, Albany and New York *as a group*, the Commission ordered the rates at all of these ports cancelled, having concluded that one of them, New York, did not require rail rate equalization in order to be competitive. This finding of the Commission caused it to completely disregard its own findings and the evidence of record which demonstrate beyond question the lawfulness of the proposed parity rates at Boston, and caused it to refuse to consider the proposed Boston rates on their merits.

The foregoing finding of the Commission is arbitrary and erroneous, and is completely without support in the record or in the Commission's factual findings. The tariffs filed by these plaintiffs and their connections were and are unconditional, and were in no manner published to become effective only if similar rates should become effective at New York: to the contrary, the record demonstrates unequivocally that the Boston rates were presented independently, and were, therefore, entitled to consideration on their merits.

XI.

The record in this proceeding clearly establishes the lawfulness of the proposed parity rates at Boston. Further, the record demonstrates that said proposed rates of plaintiffs and other railroads serving Boston are within the zone of reasonableness, and are not so low in comparison with rates at other North Atlantic ports as to prevent competition by carriers serving such ports. To the contrary, the record establishes, and the Commission has found, that under their present rate handicap, railroads serving Boston, including plaintiffs herein, are unable to compete for Affected Territory traffic.

XII.

Plaintiffs allege that the said order of the Commission, dated December 5, 1960, is based upon errors of law, is not

supported by evidence or adequate findings, exceeds the statutory power of the Commission, and is unlawful, arbitrary, capricious, null and void, for the following additional reasons:

[fol. 5068] (1) The Commission has erroneously and arbitrarily refused to consider on their merits the equalizing rates of the plaintiffs to and from Boston in violation of its duties under the Interstate Commerce Act.

(2) The order does not rest upon evidentiary findings which are essential to support a conclusion that the proposed rates are unlawful under the Interstate Commerce Act, or to support a conclusion that the proposed rates to and from Boston were conditionally published to take effect only if the proposed New York rates are permitted to become effective.

(3) The order rests upon an unauthorized attempt by the Commission to control the volume and direct the flow of traffic moving through the several competing ports.

(4) The order unlawfully denies to plaintiff railroads the right to meet the rate of competing railroads by an adjustment of rates within the zone of reasonableness and without undue or unreasonable preference or prejudice.

(5) The Commission failed to recognize that, as a matter of managerial discretion, railroads may voluntarily make rate changes which they can not be compelled by law to make.

(6) The Commission arbitrarily and without authority has required plaintiffs to maintain, on import and export traffic between Boston and Affected Territory, differentially higher rates than those maintained by competing railroads serving Portland, Maine, Philadelphia, Baltimore and Hampton Roads for the purpose of diverting such traffic to said carriers, and for the added purpose of continuing and perpetuating the rate advantage of said carriers over plaintiff railroads serving the port of Boston.

(7) The order of the Commission requiring cancellation of the suspended schedules proposing rates via Boston

equalized with those via Baltimore is invalid because there are no factual findings to support such order.

(8) The order of the Commission requiring cancellation of the suspended schedules is invalid because the Commission has exceeded the power delegated to it by Congress with respect to regulating rates.

(9) The Commission failed to comply with the National Transportation Policy as declared by Congress and set forth at the beginning of the Interstate Commerce Act: "To promote safe, adequate, economic and efficient service, [fol. 5069] and foster sound economical conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preference or advantages, or unfair or destructive competitive practices; . . . all to the end of developing, coordinating and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States of America, of the Postal Service, and of the national defense."

XIII.

The Commission threatens to enforce its said order unless it is enjoined, set aside, annulled and suspended. Said order and its enforcement will cause immediate and irreparable injury to the plaintiffs, and the plaintiffs are without an adequate remedy at law.

XIV.

Unless the operation and enforcement of said order be restrained, pending final disposition of this action, the injury to plaintiffs in the interim will be irreparable even by final judgment for plaintiffs, whereas no injury will be sustained by the defendants or by other parties before the Commission, or by the public, through issuance of a temporary restraining order and an interlocutory injunction.

Wherefore, plaintiffs pray:

1. That process may issue against the United States of America and the Interstate Commerce Commission.

2. That this Court stay, restrain, and suspend the operation of the order of the Commission dated December 5, 1960 pending the final hearing and determination of this action.

3. That a Court constituted as required by Title 28, U. S. Code, sections 2284 and 2321-2325, consisting of three judges, be convened and that said Court so constituted and convened shall hear this petition upon due and legal notice to defendants.

4. That the operation, enforcement and execution of said order be permanently enjoined and said order be permanently set aside, annulled and suspended.

[fol. 5070] 5. That plaintiffs recover their proper costs.

6. That plaintiffs have such other and further relief in the premises as to equity may appertain and as may be deemed meet and just by this Honorable Court.

Neal Holland, Robert G. Bleakney, Jr., 150 Causeway Street, Boston 14, Massachusetts, Attorneys for Plaintiffs.

Of Counsel: James W. Grady, Thomas P. Hackett, 54 Meadow Street, New Haven, Connecticut.

Dated: January 11, 1961

[fol. 5071] Appendix "A" to complaint—Commission's report and order dated December 5, 1960 omitted. Printed side folio 3968, page 3738 supra.

[fol. 5072]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To
North Atlantic Ports

ORDER DATED JANUARY 16, 1961 POSTPONING THE COMPLIANCE DATE OF THE ORDER OF DECEMBER 5, 1960

Present: Everett Hutchinson, Chairman, to whom the above-entitled matter has been assigned for action thereon.

An action has been filed in the United States District Court for the District of Massachusetts seeking review and annulment of the order entered by the Commission in these proceedings on December 5, 1960. Counsel for respondent railroads have requested that the compliance date of January 23, 1961, specified in the order for cancellation of schedules, be postponed pending final disposition of the proposed court action, and have represented and agreed as a condition to the requested postponement that the respondent railroads will voluntarily suspend and keep in suspense the schedules involved until the proposed court action is finally terminated.

Upon consideration of the record in these proceedings; and for good cause shown:

It is ordered, That the order entered by the Commission in these proceedings on December 5, 1960, requiring the cancellation of schedules on or before January 23, 1961, upon not less than one day's notice to the Commission and the general public, be, and it is hereby, modified with respect to all schedules therein ordered cancelled so as to

postpone the compliance date of January 23, 1961, specified in the order, until further order of the Commission.

Dated at Washington, D. C. this 16th day of January, A. D. 1961.

By the Commission, Chairman Hutchinson.

Harold D. McCoy, Secretary.

[fol. 5073]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

MASSACHUSETTS PORT AUTHORITY et al., Plaintiffs in Intervention,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

MARYLAND PORT AUTHORITY et al., Defendants in Intervention.

ANSWER OF THE UNITED STATES OF AMERICA—
Filed March 27, 1961

The United States of America, a defendant in the above action, in answer to the Complaint of the plaintiffs and to the Complaints of the intervening plaintiffs, admits that the order of the Interstate Commerce Commission is erroneous, in that it is premised on the erroneous finding that the proposed rate schedules contemplated equalization of the northern tier ports as a group with the southern tier ports, and in that, by reason of said erroneous finding, the Commission considered the lawfulness of the proposed rates solely from the standpoint of their unitary application to the northern tier ports and did not consider, separately and independently for each northern tier port, the

lawfulness of the proposed rates as applied to traffic to and from each of said ports.

[fol. 5074] The United States neither admits nor denies the other allegations of the Complaint of the plaintiffs and the other allegations of the Complaints of the intervening plaintiffs.

Wherefore, this defendant prays that the order of the Commission be set aside.

John H. D. Wigger, Attorney, Department of Justice, Washington 25, D. C., Lee Loevinger, Assistant Attorney General, Elliot L. Richardson, United States Attorney, Attorneys for the United States of America.

Certificate of Service (omitted in printing).

[fol. 5075]

ORDER

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

ORDER DATED APRIL 11, 1961 REOPENING THE PROCEEDINGS FOR RECONSIDERATION, ETC.

Upon consideration of the decision of the Commission in these proceedings on December 5, 1960, and upon further consideration of the record in said proceedings, and for good cause shown:

It is ordered, That these proceedings be, and they are hereby reopened for reconsideration on the present record

of the lawfulness of the proposed rates separately and independently on traffic to and from each northern tier port.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 5076]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615[1]

Equalization of Rates at North Atlantic Ports

Decided June 15, 1961.

Upon reconsideration:

1. Prior findings that proposed reduced class and commodity rates on export and import traffic between interior points in differential territory, on the one hand, and New York and Albany, N. Y., Boston, Mass., and Portland, Maine, on the other, are not shown to be reasonably related to the present rates on like traffic to and from Baltimore, Md., Philadelphia, Pa., and the Hampton Roads (Va.) ports, and would cause undue prejudice and preference as between the ports named, amplified and affirmed.
2. Other findings in prior report, 311 I.C.C. 689, affirmed. Appearances as shown in prior report.

REPORT OF THE COMMISSION ON RECONSIDERATION

Goff, *Commissioner*:

In the prior report, 311 I.C.C. 689, we found that schedules by which the respondent railroads proposed rate re-

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[1] This report embraces also Fourth-Section Application No. 32204, Import and Export Rates from and to North Atlantic ports.

ductions and thus sought to equalize the rates[2] on export and import traffic between the ports of New York, N. Y., Boston, Mass., Portland, Maine, and Albany, N. Y., herein called northern tier ports, and interior points in differential territory, described in that report, with the corresponding rates between Baltimore, Md., and the same interior points, were not shown to be reasonably related to the present rates on like traffic between the southern tier ports (Baltimore, Philadelphia, Pa., and Hampton Roads, Va.) served by competing (protestant) railroads, and would cause undue preference of the ports first named, as a group, and [fol. 5077] undue prejudice to the southern tier ports. We found also that schedules by which the protestant railroads proposed, if the foregoing rates should be found lawful, to reduce their rates between the southern tier ports and the interior territory, and thus restore the present relationships, were not shown to be just and reasonable. Some of these railroads serve New York, as well as Philadelphia and Baltimore. By our order of December 5, 1960, the schedules were ordered canceled and the fourth-section application in the embraced proceeding was denied.

Upon further consideration of the prior decision, and of the record herein, on April 11, 1961, we reopened the proceedings for reconsideration, on the record as made, of the lawfulness of the proposed rates separately and independently on traffic to and from each of the northern tier ports.

Only the principal facts recited in the prior report will be repeated herein. The evidence includes a vast amount of statistical data. Much of these relate to tonnage moving through each port and, collectively, through the northern and southern tier ports. The most important of these data are summarized in the appendices to the prior report, to which reference will herein be made.

Two corrections are necessary. In appendix E, footnote 2 in each table relates only to the percentage shown in parentheses. In appendix C, the words "North Atlantic" should follow the word "Total" in each of the two lower tables.

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[2] Rates and differences in rates are stated per 100 pounds.

The commodities embraced in these proceedings when moving by water are of two types, called bulk cargo and general cargo. The bulk cargo consists almost entirely of export grain and import ores, other than iron ore.[3] The general cargo includes principally manufactured and semi- [fol. 5078] manufactured articles of relatively high value, which generally provide the more profitable "top loading" for ships and the greater employment and revenue per ton for the port community.

The present rates on import traffic are the same from New York, Boston, and Portland, except as noted below. Those from Philadelphia and Baltimore are 2 cents and 3 cents, respectively, under the rates from New York, except that on classes 1 and 2 they are 6 cents from Philadelphia and 8 cents from Baltimore under New York. Import rates from Portland, applicable over routes through Canada only, are the same as those from Baltimore, and such rates and routes also are in effect from Boston.

On export traffic, again New York, Boston, and Portland have the same rates. The rates to Philadelphia are 2 cents less and to Baltimore 3 cents less than those to New York, except that on export grain the rates to Philadelphia are 0.5 cent under and those to Baltimore 1.5 cents under New York, and on flour they are, respectively, 1 and 2 cents under the New York rates.

The Hampton Roads rates are the same as those to and from Baltimore only from and to points in differential territory west of a north-south line in central Ohio described in the prior report.

Rates to and from Albany are the same as those to and from Philadelphia, generally 2 cents under New York. The respondents proposed rates for Albany on the Baltimore basis.

As stated, our prior findings were directed to the northern tier ports as a group. This was done to accord with the group proposal made by the respondents. That pro-

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[3] Other much more important bulk commodities are export coal and import iron ore, and petroleum. Of the petroleum which moves through North Atlantic ports, little or none moves to the affected territory.

posal, in which the respondents serving Boston joined, specifically purported to equalize their rates with the rates to and from Baltimore. The general brief of the respondents, in which the Boston respondents joined, stated their posi-
[fol. 5079] tion as a unit, without reservation, and dealt with much of the evidence as such. The 16 findings which they requested made no mention of any individual port. This brief contains numerous references to their proposal as a "group adjustment." For example, at page 60 of their argument the respondents refer to the fact that the instant "group adjustment" was initiated in an effort to remove the differential as was done with respect to ex-lake grain. Moreover, their requested finding 4 was as follows:

> Equalized through charges are a competitive necessity in the proposed group rate adjustment.

The New Haven and Boston & Maine, hereinafter called the Boston respondents, arguing that there was no need in this proceeding for cost evidence and that in a "competitive situation" relative distances must be ignored, in their supplemental brief stated that the proceeding "involves a broad group adjustment."

However, the Boston respondents and particularly the Boston port interests in their exceptions, urge that, regardless of the conclusion reached as to New York, the reduced rates to and from Boston be found lawful. Upon further consideration of the position thus taken by the Boston interests and of our prior decision herein, we reopened these proceedings for reconsideration of the lawfulness of the proposed rates separately and independently on traffic to and from each of the northern tier ports. Facts and contentions stated in the prior report will be restated only to the extent necessary for a clear understanding of the issues.

In general.—Differentials of substantially the same amount as those now prevailing were initially agreed upon in 1877 as a compromise by the lines which served New York, on the one hand, and the Philadelphia and Baltimore
[fol. 5080] railroads, on the other, following about a decade of rate instability in which rate wars were the outgrowth

of repeated failures of the port railroads to agree on port rate relationships. Comparative rail distances between differential territory and Baltimore, Philadelphia, and New York were an important consideration in the compromise, the Baltimore lines having insisted on greater rate differences, and the New York lines contending for equal rates with Baltimore. About a decade later it was agreed that Boston and Portland should have rates the same as New York. The average short-line distances between differential territory and the several ports are 698 miles to Baltimore, 750 miles to Philadelphia, 804 miles to New York, and 921 miles to Boston.[3] Between Hampton Roads and its smaller differential territory, the average is 883 miles as compared with 853 miles to New York.

In a series of proceedings extending from 1898 to 1941, most of which are cited in the prior report,[4] the assailed differentials were repeatedly approved.

As explained in the prior report, at pages 693-694, because of the differences in the ocean rates which prevailed at the time the differential adjustment was first adopted, its effect was to place all of the North Atlantic ports on a roughly equal basis with respect to the combined rail and ocean charges between interior points and foreign destinations over routes through each of those ports.

By 1935, however, ocean tramp rates to and from the several ports having been equalized, the charges for each type of ocean service were then roughly equal, conference [fol. 5081] and non-conference rates having been equalized between 1916 and 1920. See *Maritime Asso., Boston Chamber of Commerce* v. *A. A. R. R. Co.*, 95 I.C.C. 539, 554. According to the record, ocean rates may vary dependent upon the type of service; non-conference lines may charge lower rates than conference lines; and tramp operators, whose service is generally slower, usually charge substantially less than conference rates. However, all ocean lines

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[4] Others are *Export and Domestic Rates*, 8 I.C.C. 214; *In The Matter of Import Rates*, 24 I.C.C. 78; *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I.C.C. 691; *City of Philadelphia* v. *Baltimore & O. R. Co.*, 231 I.C.C. 21; and *State of New Jersey* v. *Baltimore & O. R. Co.*, 245 I.C.C. 581 (1941).

in the same type of service generally maintain the same charges. With equalization of the ocean rates, the combined rail-ocean charges through the northern tier ports became higher than those through the southern tier ports.

The respondents and New York and Boston port interests[5] contend that their tonnage of the subject traffic[6] has declined and that the higher rail-ocean transportation charges through those ports than through the southern tier ports, which have prevailed since 1935 when equalization of all ocean rates was completed, have been the cause of their inability to compete for this traffic, with consequent diversion of a large share of it from their ports to the lower-rated ports south of New York. They claim that this loss in tonnage has been experienced by them particularly since 1946, a period of extensive growth in total United States foreign trade. This growth was, for the most part, in certain bulk commodities, such as coal, petroleum, and iron ore, which tonnage is not here concerned.

The Boston respondents say that their share of the subject traffic "has been almost completely wiped out," that "they are no longer a competitive factor" in its movement; [fol. 5082] that Boston is no longer able to participate in it to a significant extent; and that they seek "once more [to] become competitive" for it. These statements imply, as do those of respondents generally, that at some earlier time they had opportunity to compete for this traffic and enjoyed a proportionately greater amount of it than they did in 1955-1956. Such a time presumably was prior to 1935,[7] before the establishment of ocean rate parity, which they say was the circumstance that disrupted the equality of rail-ocean charges through the several North Atlantic ports and thus placed the respondents and their ports in a disadvantageous position.

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[5] Albany's tonnage, except for export grain, was negligible.

[6] The total volume, about 11 million tons, of this traffic, as shown in appendix F to the prior report, was about 7 percent of all foreign commerce through the North Atlantic ports in 1955.

[7] This year will be used for purposes of discussion, although the ocean rates of most importance here apparently were equalized by 1920.

The evidence as to the tonnage which moved on the subject rates is limited to the years 1946 or 1947 and 1951, and to the traffic test period or composite year from August 1, 1955, to July 31, 1956. Except for the composite year, the data are incomplete or not on comparable bases. As to traffic through New York, the data include only tonnage handled by four of the respondent railroads which serve that port and do not include that handled by the Baltimore & Ohio, the Pennsylvania, or the Central Railroad of New Jersey, which also serve the port. As to Boston, the New Haven produced no data except for the composite year. The data for the Boston & Maine at that port and Portland are for that year and 1951 only. Albany's tonnage is shown only for the composite year. The figures for the test period, shown in appendix F to the prior report, are the only complete tonnage data of record for the subject traffic. As no corresponding data were presented for any period prior to the equalization of ocean rates, when the respondents presumably were in a position to compete, ratewise, for the subject traffic unhampered by a disparity in through [fol. 5083] charges, the record affords no basis for determining the relative participation of the opposing railroads and ports in this traffic before and after such equalization. Thus, it lacks evidence necessary to test the validity of the claimed loss of such traffic and to show that such loss was due to disruption of the parity of the rail-ocean charges.

The respondents say that the general tonnage data compiled annually by the Department of the Army, Corps of Engineers, were "one of the basic alarms" which prompted the proposed equalization. Such data reflect all tonnage handled through the North Atlantic ports, rather than rail carriage of the subject traffic to and from the affected territory only. The tonnage data presented by the port interests are, for the most part, even more general in character and are similar to those summarized in appendices B and D to the prior report.

Analyses of these overall tonnage data for years since 1922, as shown in appendix D and the carload exports as shown in appendix B since 1938, which afford the only indication of the relative participation of the several ports in

the total North Atlantic trade for significant periods, were discussed on pages 700 to 707 of the prior report. Most of the increase in traffic which contributed to a greater increase in such trade through southern tier ports than through northern tier ports consisted of the bulk commodities mentioned above. As appendix C shows, excluding those commodities and grain, the percentages of the remainder of the total foreign tonnage shared by the northern tier ports and the southern tier ports were only slightly different in 1955 than in 1946, and, as indicated in the lower half of appendix C, the trends of the movements of such tonnage from 1946 to 1955 for Boston and New [fol. 5084] York compare favorably with those of the southern tier ports. Export coal, except for some movement through New York, presently minimal, moved and continues to move almost exclusively through the southern tier ports; so also, most of the North Atlantic grain exports, particularly since World War II, have moved through the southern tier ports.

From 1946 to 1955 as to exports, exclusive of coal and grain, the small decline through southern tier ports was slightly more than that through the northern tier ports. A comparison with 1939, however, in appendix B, shows that the major ports have experienced a substantial increase in such exports.

The respondents and the New York and Boston port interests contend that a parity of rates to and from the ports and equalized through charges are a competitive necessity. Boston emphasizes the small volume of the subject-traffic general cargo moving through its port. In view of the preponderance of such traffic, aggregating 2.8 million tons as shown in appendix F, which moved through New York at rates the same as those of Boston, the validity of this contention is not established.

Boston argues that, as a practical matter, its railroads are excluded from competing for the subject traffic, and that with rate parity they would be able to compete effectively for it. It points to the movement of export wheat to Hampton Roads and Baltimore under a parity of rates as an example of the effectiveness of parity in securing traffic for Hampton Roads. This and other grain move-

ments under the subject rates in the composite year are shown in the following table:

[fol. 5085]

Commodity	Port differential[1]	To	Tons	Percent[2]
Wheat	1.5	Hampton Roads	819,609	36.8
"	1.5	Baltimore	800,237	36.0
"	0.5	Albany	58,850	2.6
"	0.5	Philadelphia	488,310	21.9
"		Boston	281,968	12.6
"		New York	117,786	5.3
"		Portland	35,405	1.6
Corn	1.5	Hampton Roads	None	
"	1.5	Baltimore	1,243,846	81.7
"	0.5	Philadelphia	211,548	13.9
Barley and Rye	1.5	Baltimore	176,774	91.0
" " "	1.5	Hampton Roads	None	

It is obvious from this evidence that factors other than rate parity control or strongly affect the grain movement, as is indicated by the heavy movement of corn, barley, and rye to Baltimore and none to Hampton Roads; by the substantial tonnage of corn to Philadelphia at rates higher than to either port south of it; by the much larger movement of wheat to Boston than to New York or Portland, despite equality of rates; and by the much smaller movement of wheat to Albany than to Boston or Philadelphia even though Albany has the advantage of shorter distances and a lower rate than Boston and a parity of rates with Philadelphia.

The record shows that during 1955 and 1956, imports, including a variety of manufactured articles, arrived at the port of New York destined to Baltimore and Philadelphia. These were forwarded over protestant railroads,

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[1] Under rates to Boston, New York, and Portland.

[2] Of total subject exports of same commodity through New York and southern tier ports.

738 carloads to Baltimore and 759 carloads to Philadelphia. Similarly, in those years, 1,722 carloads of commodities originating at Philadelphia and 863 carloads at Baltimore were forwarded over their lines to New York for export. These movements totaled 4,082 carloads and 122,067 tons. Another example of the attraction of New York for export [fol. 5086] traffic is the preponderance of New England's exports and imports which move through New York, as indicated in the prior report. This movement aggregated about 7,000 carloads in the composite year, and some of it moved from and to points nearer to Boston than to New York.

Witnesses for the respondents and their supporting shipper interests testified that the differentials are not all-controlling in the movement of this traffic, that the choice of ports is influenced by many other factors, and that it is impossible to determine the channeling effect of the differentials in such movement. Thus, witness for the New England Industrial League testified that its manufacturers "pay the higher rail costs involved in using a port other than Boston in return for ocean time advantages." The wide variety of imports and exports which move on the subject rates through New York, exclusively or almost so, even though its rates are the same as those from or to Boston and higher than those from or to the southern tier ports, also evidence the influence of factors far more powerful than the differentials.

A Boston witness testified that in order to balance the relatively light-weight, small-lot shipments which New England manufacturers produce, it needs bulk and bottom cargoes, such as heavy machinery, cars, and trucks. The record shows that the movement of these articles to New York by protestants alone is far greater than to Baltimore or any other southern tier port. The following table shows the proportions of the exports of such subject traffic which moved to those ports in the composite year, expressed as a percentage of the total movement through New York and the southern tier ports:

[fol. 5087]

Commodity	New York (percent)	Baltimore (percent)
Automobiles and auto trucks, n.o.s.[8]	94.0	2.6
Agricultural implements, n.o.s.	92.9	3.0
Automobiles, passenger	90.5	8.8
Machinery and machines, n.o.s.	81.9	8.5
Vehicles, motor, n.o.s.	86.0	7.2

In the prior report we referred to the preponderance of superior steamship and port services at New York, and we concluded that these, among other things, were the chief reasons why that port was in a position to attract the large volume of traffic which it did, notwithstanding that its rates were higher than those of the southern tier ports and Albany.

Boston's position is that, with respect to port services and facilities, it is fully competitive with the southern tier ports. It makes almost no mention of the extensive steamship and port services at New York. As to steamship services, its sailings are said to be adequate to accommodate its present traffic. It urges that the sailings would rapidly increase and be fully competitive if available tonnage were increased, and suggests that the lack of bulk cargo is the cause of the light movement of general cargo through its ports. As grain affords one of the principal bulk cargo exports, the following table based on the composite year, shows that both New York and the southern tier ports experienced no difficulty in this regard:

Port	Grain exports (tons)	Other exports (tons)
Boston	358,516	3,256
Philadelphia	705,578	149,231
Hampton Roads	859,191	189,826
New York	203,994	2,189,051

The location of the New Haven's lines, which do not extend westward from New York, handicaps it in competing

[8] Not otherwise specified.

with other railroads for the subject traffic to and from that port. This was shown by the volume of such traffic handled by it in the composite year, consisting of 16 carloads of [fol. 5088] imports and 26 carloads of exports from and to New York, as compared with 4,121 carloads of imports and 2,785 carloads of exports which it moved through New York from and to non-affected territory. Through Boston it handled subject traffic consisting of 320 carloads of imports and 68 carloads of exports, contrasted with 2,084 and 1,867 carloads, respectively, of other imports and exports principally to and from New England.

The Boston & Maine apparently has little participation in the subject traffic, except grain, of which it handled 3,235 carloads to Boston, as compared with 91 carloads to Portland, in the composite year. Of imports to differential territory, it handled 226 carloads from Boston and 164 from Portland.

Additional evidence of record relating more particularly to the individual North Atlantic ports will now be discussed.

Albany.—Following the eastern class-rate revision, effective December 3, 1931, the export-import rates to and from North Atlantic ports other than Albany were readjusted. After several attempts the railroads failed to agree upon properly related rates for Albany. In *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co.*, 219 I.C.C. 151 (1936), called the *Albany* case, that port assailed its rates as unreasonable and unduly prejudicial to it and unduly preferential of other North Atlantic ports. We found those rates unreasonable to the extent that they exceeded those on like traffic to and from Philadelphia, and unduly prejudicial and preferential to the extent that they bore a relation to the Baltimore, Philadelphia, and New York rates less favorable than the rates on the maximum bases prescribed.

Albany is 143 miles north of New York, and is served by the New York Central and the Delaware & Hudson. The [fol. 5089] similarity of the average distances between key points in differential territory and Albany of 737 miles, and Philadelphia, 746 miles, was an important considera-

tion in prescribing the described port relationship. Albany's position herein is that the relief afforded it in the case last cited was inadequate as to the subject traffic, and that if the North Atlantic port rates are equalized, as sought by the respondents, its rates should be no higher than those to and from Baltimore and Norfolk.

The evidence upon which it relies, other than with respect to its port facilities, is mainly that presented by respondents herein. Total exports of grain moved through that port increased from 94,875 tons in 1923 to 844,827 tons in 1955, while Philadelphia's exports in those years were 16,641 and 712,767 tons. Since 1946 it obtained, on the average, annually about 15 percent of the grain exports through North Atlantic ports. Of the subject grain traffic, as shown in appendix F, it obtained 141,000 tons or 3 percent of such traffic to all the ports, as compared with 4.4 percent for New York, 7.7 percent for Boston, and 15 percent for Philadelphia.

Except for export grain, Albany's participation in this traffic is insignificant. Philadelphia, with the same rates, obtained 6.6 percent of the imports and 10.6 percent of the exports, and New York, with higher rates, obtained 23.1 percent of the imports and 29.3 percent of the exports. Thus, as to both exports and imports, it is apparent that factors other than the differentials strongly influenced the movements.

As we observed on page 172 of the report in the *Albany* case, the basic port rate structure was formed by the voluntary joint action of the railroads serving the several ports and their connections, and depends for its very existence upon the participation of every such carrier. [fol. 5090] Upon a comprehensive record, we there concluded that rates on port traffic between Albany and differential territory "in comparison with the port rate structure applying to and from the other ports" were unlawful as above indicated, and lawful port relations were prescribed, which are still in effect. The evidence presented in support of the Albany rates proposed herein, which would modify the present relationships, not only of Albany to the other northern tier ports, but also to Philadelphia

and the other southern tier ports, is inadequate to support findings that the relationships required in the *Albany* case are in any respect unlawful under present conditions.

New York.—The rates to and from New York have been considered as the basic rates in this adjustment. Under those rates and other conditions favorable to it, the port, over many years, has developed its foreign commerce, including that considered herein, and has maintained its position as the nation's chief port. This is clearly portrayed by the facts previously discussed herein and in the prior report.

It is noteworthy that, since equalization of the ocean rates, the only complaint of any northern tier port in which the differential adjustment on export and import traffic generally has been assailed was filed by Boston in 1922. *Maritime Asso., Boston Chamber of Commerce* v. *A. A. R. R. Co., supra.* It there contended that the equalization of ocean rates pursuant to the policy of the United States Shipping Board, and the decline in Boston's commerce constituted material changes in circumstances and conditions which warranted revision of the port adjustment. Its need for bulk cargo and the decline in grain and flour exports from the west, upon which it had largely relied for such cargo, were also stressed. In that proceeding New York opposed lower rates for Boston than for New York. In dismissing the complaints the Commission, at page 567, said:

> [fol. 5091] The port differentials are arbitrary. * * * It may be conceded that they "are the result of compromise, arbitration, and agreement resorted to as the only means so far found of averting rate wars." They do not accurately reflect transportation conditions, first because they are uniform, and second, because the lesser distances from differential territory to Philadelphia and Baltimore as compared with New York and Boston are reflected only in part.
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> In the present proceeding there is no evidence that the rates under attack are either unreasonably high or

> unreasonably low. The real issue is whether undue preference and prejudice exist. In view of the substantial advantages in distance from differential territory which Philadelphia and Baltimore enjoy, as compared with New York and Boston, * * * we are unable to find that there is anything unlawful about the port differentials in favor of Philadelphia and Baltimore. Compared with the advantages in distance, the present differentials in many cases are relatively small.

As we said in the prior report in summing up the evidence intended to show loss of the subject traffic after equalization of the ocean rates, such evidence fails to disclose that the parity in rail-ocean charges has diverted this traffic from the northern tier ports. On the contrary, it shows that New York alone attracts the greater part of the subject general-cargo traffic, and that the movement to and from the ports of the bulk cargo commodities, chiefly grain and bulk ores other than iron ore, is affected by numerous factors other than the differentials. Especially is this true of export grain. There are many circumstances peculiar to the movement of these commodities, as disclosed in our reports in *Export Grain from Buffalo to New York,* 278 I.C.C. 31, 292 I.C.C. 647; *Iron Ore from Eastern Ports to C.F.A. Points,* 291 I.C.C. 527, 299 I.C.C. 195, and 300 I.C.C. 102; *Coal, Clearfield Group to Philadelphia for Export,* 308 I.C.C. 425. Findings as to rates on such commodities are not decisive of issues concerning the lawfulness of existing relationships in the general body of rates on this port traffic.

The great variety and volume of the subject traffic which flows through New York under the circumstances disclosed [fol. 5092] of record emphasizes the strong attractions which induce shippers to use this port. Numerous commodities move entirely or preponderantly through the port, shippers preferring it not only to Boston and Portland, which have the same rates, but to Albany and the southern tier ports which have lower rates. The relative advantages which the port offers, such as superior steamship service and sailings, and its extensive port services, are important considerations along with the rail-ocean charges themselves.

Boston.—The Boston respondents and port interests supporting them contend that their rate disadvantage of 2 cents or 3 cents (.5 cent or 1.5 cents on grain), as compared with Philadelphia and Baltimore, makes it impossible for them to compete to a significant extent with the southern tier ports. As previously discussed and as shown in appendix F, except for export grain, a relatively small volume of the subject traffic moves through Boston. Even less moves through Portland and Albany, despite import rates from the former over differential routes through Canada the same as from Baltimore, and lower rates from and to Albany than from and to Boston. As portrayed in appendix F, New York was able to attract 2.8 million tons of general cargo, a volume larger than all of the other North Atlantic ports combined, while Boston, with the same rates as New York, obtained only 21,000 tons of such traffic. These and other comparative traffic data, as previously discussed herein, furnish impressive evidence that factors other than the claimed rate disadvantage with southern tier ports are the chief, if not the only, cause of Boston's failure to secure more of such traffic.

The Advisory Council to the Port of Boston Commission, in reports to the Governor of Massachusetts in December 1957, expressed deep concern as to the lower productivity and much higher labor costs incident to discharging and loading vessels at Boston as compared with New York, [fol. 5093] Baltimore, and Philadelphia. It cited stevedoring costs per long ton of $3.67 at the latter two ports, contrasted with $5.33 at Boston. Boston argues that the make-work practices causing these high costs have no effect on port-competitive costs, as any additional costs are borne by the steamship companies. It calls attention also to the Council's view, expressed in the second of its reports, that the practices would disappear if a more regular and increased volume of port traffic were made available.

Speaking of the subject traffic generally, a traffic officer of one of the principal respondents testified that it is impossible to determine the channeling effect of the differentials. As to export grain, of which Boston received 2.5 times as much as Albany although the rates to Albany are

lower, the Boston respondents concede, and the record shows, that there are a number of factors other than the differential which influence movements to the ports.

As previously indicated, the average short-line distance to Boston exceeds that to Baltimore by 223 miles, and to New York by 117 miles. In formulating port rate adjustments, the railroads have, to a considerable degree, subordinated relative distances to other factors. However, in proceedings which involved the North Atlantic port adjustment since the 1935 amendment to section 3(1) of the act making that paragraph applicable to ports and port districts, it is significant that relative distances were uniformly accorded substantial weight. *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co., supra; City of Philadelphia* v. *Baltimore & O. R. Co., supra; State of New Jersey* v. *Baltimore & O. R. Co., supra,* at page 588. Domestic class rates generally reflect differences in distance and service. Including increases authorized in Ex Parte No. 196, the class rates from Chicago, for example, for classes [fol. 5094] 20 to 100, are from 10 to 48 cents higher to Boston than to Baltimore, and from 6 to 30 cents higher than to New York.

Albany's rates now reflect, to some degree, its shorter distances from the differential territory than to Boston and New York. From Chicago, for example, the distance to Albany is 184 miles less than to Boston, to which it is intermediate. Boston's rates, as proposed, would be lower than the present rates to and from Albany, and also lower than the present rates to and from New York and Philadelphia. Rates lower to or from Boston than to or from the other ports just mentioned, over some routes, would be in violation of the long-and-short-haul provisions of section 4 of the Interstate Commerce Act.

In an early case in which we dealt with the port rate adjustment to and from these ports, we indicated that Boston's rates should not be lower than those to and from New York. *Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. Co.*, 24 I.C.C. 55, 77, 24 I.C.C. 674. Consistently in subsequent proceedings where the issue was presented, the same conclusions were reached. *In the Matter of Im-*

port Rates, supra; Maritime Asso., Boston Chamber of Commerce v. *A. A. R. R. Co., supra.* Significantly, none of the substantial general increases in rates authorized since the latter decision in 1925 has been reflected in these differentials.

Portland.--Except from points in the northern part of the affected territory, such as Detroit, Mich., and points in northern Michigan, the short-line distances to Portland generally exceed those to any other North Atlantic port in the United States. While Portland has export rates from that territory the same as to New York and Boston, and import rates on certain commodities on the Baltimore level over routes through Canada, nevertheless, except for [fol. 5095] the small volume of imports through Albany, the volume of both exports and imports which it handled on the subject rates was the smallest of any of the North Atlantic ports. However, the total foreign commerce of the port in 1955 was 10.9 million tons (of which 10.6 million tons were petroleum), as compared with 6 million tons in 1946.

No evidence was presented by any Portland port interest in support of respondents' proposal. As stated in the prior report, this is the only port served by the Maine Central, and, for reasons therein stated, it opposed the respondents' proposed import rates. It was supported in this position by the Maine Port Authority and by commercial and industrial interests of the State of Maine.

General Discussion and Conclusions

For over 20 years following the above-mentioned amendment to section 3(1) of the act, no North Atlantic port, except Philadelphia, has complained of any unlawfulness in the general adjustment of these port rates. Prior to that amendment, no northern tier port served by the respondents had complained since Boston, in 1922, assailed its rates in the proceeding above cited. New York commercial interests intervened in that proceeding and asked that the New York-Boston rate relationship be not disturbed.

The facts in support of the case for Boston as here presented are very similar to those relied upon to support

that complaint. It is recognized by Boston that average distances to that port and New York are greater than to Baltimore, but it argues that competitive needs of the carriers justify a departure from distance-based rates. As above indicated, the present rates reflect substantial deviation from relative distances. Such departures from the transportation standard are characteristic of many port rate structures, the parity of rates being maintained generally by common consent of the carriers and the ports concerned.

[fol. 5096] The situation before us here differs. While in the instant proceeding there is strong insistence by the respondents and the ports supporting them upon rate parity, equally strong are the claims of their opponents, fully substantiated of record, as to the opponents' geographical, transportation, and cost advantages. In general, in the rare instances where rate changes in port relationships have been required by us, distance has been an important consideration. The *Albany* case, *supra; Nueces County Nav. District No. 1* v. *Abilene & S. Ry. Co.*, 291 I.C.C. 459, and cases therein cited. Here, as stated, the distance disadvantages of Boston, for example, are 223 miles over Baltimore, 171 miles over Philadelphia, and 117 miles over New York; and the latter port, is 106 miles more distant than Baltimore. Such great differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3(1) of the act. What has just been said applies also, in greater or less degree, to each of the other northern tier ports.

Moreover, for the reasons previously discussed, the evidence is persuasive that, so far as New York is concerned, rate equalization is not required to enable that port to meet the competition of the southern tier ports, and that, so far as Boston, Portland, and Albany are concerned, such equalization would not materially affect the flow of foreign traffic through any of those ports.

We are equally persuaded that approval of rate equalization, or of rates to or from any northern tier port which would effect a closer relationship than now exists with the

southern tier ports, would result in undue prejudice to the latter ports and in undue preference of northern tier ports.

Upon reconsideration, we find that the proposed rates to and from Albany, New York, Boston, and Portland, sepa- [fol. 5097] rately and collectively, are not shown to be reasonably related to the present rates on like traffic to and from the southern tier ports, and would cause undue preference of and advantage to the named ports and undue prejudice and disadvantage to the southern tier ports. In other respects, the prior findings are affirmed.

COMMISSIONER FREAS concurs in the result.

COMMISSIONER WEBB, whom COMMISSIONER TUCKER joins, dissenting:

My reasons for dissenting in the prior report are equally applicable here and will not be restated here in any great detail.

At several places in the report the present differentials are described as substantially the same as those which have prevailed for 75 years and which have been repeatedly approved by the Commission. These statements are technically correct. The present differentials were not designed, however, to place Boston and the other northern tier ports at a competitive disadvantage by reason of the generally greater distances from those ports to the affected interior territory. On the contrary, the present differentials were designed to compensate for generally higher ocean rates to and from the southern tier ports. But, as noted in the report, when the equalization of all ocean rates was achieved in 1935, the combined rail-ocean charges through Boston and the other northern tier ports became generally higher than those through the southern tier ports. All that Boston and the carriers serving its port ask is that the condition of ocean-rail rate parity be restored so that they may once again enjoy an equal opportunity to compete for the export-import traffic involved. Inasmuch as Boston is seeking to restore, rather than to [fol. 5098] disrupt, the historic policy of rail-ocean rate equalization, the proposed rates, in my opinion, are entitled to a presumption of validity.

There are several inconsistencies in the report worthy of comment. It is said, for example, that Boston's minute share of the traffic is due to "the influence of factors far more powerful than the differentials" and that "so far as Boston, Portland, and Albany are concerned, such equalization would not materially affect the flow of foreign traffic through any of those ports." If these observations are correct, there is obviously no basis for the conclusion that the proposed rates would cause *undue* preference of and advantage to the named ports.

One statement in the report, if my interpretation thereof is correct, seems clearly erroneous. Referring to the distance disadvantages of Boston (223 miles over Baltimore, 171 miles over Philadelphia, and 117 miles over New York), the majority conclude:

> "Such great differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3(1) of the act."

In the first place, the distance disadvantages of Boston are reflected to only a negligible extent in the present differential. The differential, as previously noted, was originally fixed, not to compensate for any distance disadvantage, but to offset generally higher ocean rates from and to the southern tier ports.

More important, comparable distance disadvantages have been disregarded by the Commission in port cases too numerous to mention. Disregard of distance disadvantages is implicit in every port grouping recognized by the Commission. The Congress was well aware of this fact when it amended section 3(1) in 1935 by adding the words "port, [fol. 5099] port district, gateway, transit point." Prior thereto, the Supreme Court had held that ports are not localities within the meaning of section 3(1) susceptible of undue preference or prejudice with respect to import and export traffic. *Texas & P. Ry. Co.* v. *United States,* 289 U.S. 627 (1933).

The Commission was aware that the Congress was aware that distance considerations are subordinate to the goal of maximizing the number of ports available to shippers:

preventing the growth of monopoly based on geographical advantages; and insuring a free flow of commerce through as wide a range of ports as practicable. In *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co.*, 219 I.C.C. 151, 173, the following quotation appears from the House Committee report recommending passage of the bill to amend section 3(1):

> "In recommending that this bill be passed, the committee does so with the idea in mind that by amending Section 3 of the Interstate Commerce Act as thus contemplated it will encourage and promote the freedom of movement of export, import, and coastwise commerce through the ports of the country. The committee considers that it is to the interest of the public that such commerce be permitted to move freely through as many available ports as the governing circumstances will reasonably permit, and that no restrictions upon and impediments to the free movement thereof should be imposed that are not clearly shown to be sound or economically justified. The recommendation of the committee that this bill be enacted is intended to afford competing ports a forum in which to complain of rate adjustments which tend to concentrate the movement of the traffic through one port or a limited number of ports and to deprive other ports of an opportunity to handle a part of such traffic. The committee believes that such a diffusion of the traffic which moves through the ports will redound to the benefit of the producer and consumer in the interior by whom in the last analysis the transportation charges levied both for the transportation thereof and for the use of the facilities at the ports are ultimately borne."

[fol. 5100] Accordingly, I would reverse the findings in the prior report, approve the proposed reduced rates to the northern tier ports, and grant fourth section relief.

Commissioner Bush did not participate.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 5101]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

AMENDED COMPAINT—Filed July 11, 1961
(Equitable Relief Sought)

I.

Plaintiff Boston and Maine Railroad is a consolidated railroad corporation organized and existing under the laws of the States of Massachusetts, Maine, New Hampshire and New York, and authorized to do business in the State of Vermont, with its principal office and place of business at 150 Causeway Street, Boston 14, Massachusetts. It is a common carrier of property by railroad subject to Part I of the Interstate Commerce Act (49 U.S. Code, Chapter 1), operating in each of the foregoing States. In connection with the lines of other railroads it offers a rail transportation service for the movement of import and export traffic between the port of Boston, Massachusettts, and points and places throughout the continental United States, including those in so-called Affected Territory.*

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* In its report dated December 5, 1960, referred to hereinafter, the Interstate Commerce Commission described Affected Territory as follows (311 I.C.C. 689, 691):

"The territory to and from which equalization of the northern tier ports with Baltimore is initially proposed is roughly that represented by central freight association territory, in-

[fol. 5102]

II.

Plaintiff The New York, New Haven and Hartford Railroad Company, Debtor, is a consolidated railroad corporation organized and existing under the laws of the States of Massachusetts, Rhode Island and Connecticut, and authorized to do business in the State of New York, with an office and place of business at South Terminal Station, Boston, Massachusetts. It is a common carrier of property by railroad subject to Part I of the Interstate Commerce Act (49 U. S. Code, Chapter 1), operating in each of the foregoing States. In connection with the lines of other railroads it offers a rail transportation service for the movement of import and export traffic between the port of Boston, Massachusetts, and points and places throughout the continental United States, including those in Affected Territory.

III.

This action is brought and jurisdiction is invoked under the provisions of Title 28, U. S. Code, sections 1336, 2284 and 2321 through 2325, inclusive, to enjoin, set aside, annul, and suspend an order of the Interstate Commerce Commission (hereinafter termed the "Commission") dated December 5, 1960, and served January 3, 1961, entered in its Investigation and Suspension Docket No. 6615, *Equalization of Rates at North Atlantic Ports,* and in Fourth Section Application No. 32204, *Import and Export Rates From and To North Atlantic Ports,* 311 I.C.C. 689. The original report of the Commission and the order herein appealed from, both dated December 5, 1960, were attached as Appendix A to the original complaint of these plaintiffs

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cluding Illinois freight association territory and southern Wisconsin, hereinafter called the affected or differential territory. It includes territory on and west of a line extending from a point just west of Buffalo through Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof, certain points in Kentucky on the lines of The Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio."

and is incorporated herein by reference. The United States of America is made defendant herein under the authority of section 2322 of said Title 28, U. S. Code.

IV.

The venue of this action is in this Court pursuant to the provisions of Title 28, U. S. Code, section 1398, inasmuch as plaintiff Boston and Maine Railroad is incorporated in the Commonwealth of Massachusetts, and maintains its principal office in Boston, Massachusetts, within the jurisdiction of this Court.

[fol. 5103]

V.

The Commission is an administrative tribunal of the United States created by the Act to regulate commerce, approved February 4, 1887, 24 Stat. 383, and the amendments thereto, Title 49, U. S. Code, Chapter 1, now known as the Interstate Commerce Act (herein termed the "Act"), with specifically vested powers and duties under said Act and the various acts that are amendatory thereof and supplemental thereto.

VI.

The aforesaid proceedings before the Commission commenced with the Commission's order directing the suspension and investigation of certain tariff schedules published by plaintiffs herein and their connecting carriers, including, among others, New York Central Railroad Company, the Delaware and Hudson Railroad Corporation, Erie Railroad Company, and The Delaware, Lackawanna and Western Railroad Company.* Said tariffs had been proposed to become effective July 10, 1956, and would have resulted generally in a reduction of 3 cents per hundredweight in railroad rates on import-export traffic between Boston, Massachusetts and Affected Territory. Identical reductions were simultaneously published by carriers serving the port of New York, New York, and, in so far as

* The latter two railroads have since merged and are now operated as the Erie-Lackawanna Railroad Company.

export traffic is concerned, by carriers serving Portland, Maine. Carriers serving the port of Albany, New York, at the same time published reductions generally amounting to 2 cents per hundredweight in such rates between Affected Territory and that port. Plaintiff Boston and Maine Railroad serves the port of Portland, Maine, and participated in the proposed reduction in export rates to that port.

At the time of said tariff publications, and continuing to the present time, rates between Boston, Albany and New York, on the one hand, and Affected Territory, on the other, were differentially higher than those between Affected Territory and the ports of Philadelphia, Baltimore and Hampton Roads. Rates via Portland have been and are at the Baltimore level on import traffic and on the Boston level on export traffic. Through no North Atlantic [fol. 5104] port are rail rates applicable to Affected Territory import-export traffic higher than those through the port of Boston. The proposed reduction in rates to and from Boston would place such rates on a parity with those existing at Baltimore.

Immediately following the publication of these proposed parity rates by carriers serving the ports of Boston, Portland, Albany and New York, competing carriers serving the more southerly ports of Philadelphia, Baltimore and Hampton Roads, published rates via those ports designed to restore the previously existing differentials. All of the foregoing tariffs, both those proposing elimination of and those seeking restoration of the rail rate differentials, were thereupon suspended by the Commission and its investigation instituted.

VII.

The present North Atlantic rail rate differentials were established in order to permit competition among the carriers serving the several ports by off-setting the ocean rate advantage which once prevailed at New York and ports north thereof, including the port of Boston. By means of the differential adjustment, the total transportation cost through all of the competing ports was equalized.

However, since at least 1935, ocean rates have been identical to and from all North Atlantic ports. In spite of that fact, the rail rate handicap at Boston and other northerly ports has remained unchanged. Thus, total transportation charges through Boston, New York and Albany have exceeded, since at least 1935, those via the more southerly ports to the extent of the rail rate differential. The tariffs referred to herein were designed to permit plaintiffs to compete for Affected Territory traffic by eliminating the differential handicap at Boston, thereby equalizing once again total transportation costs through that port with total transportation costs through Baltimore and ports having the same level of rates as Baltimore.

VIII.

Hearings were held in connection with the tariff schedules under investigation, including those seeking the elimination of the differential at Boston, and on November 9, 1959, the Commission's hearing examiner issued his proposed report. Exceptions to said proposed report were filed by plaintiffs herein, among others, and oral argument was held before the Commission on May 24, 1960. On De-
[fol. 5105] cember 5, 1960, the Commission (Commissioner Webb dissenting, and Commissioners Freas and McPherson concurring) issued its original report and the order herein complained of. Said order of the Commission directed that these plaintiffs cancel their equalizing tariff schedules on or before January 23, 1961, upon not less than one day's notice to the Commission and to the general public.

IX.

In its original report the Commission found and concluded that:

(1) The present North Atlantic rail rate differential adjustment was designed to afford carriers serving the different ports competitive rates by equalizing total transportation charges through the several ports on traffic moving between points in Affected Territory and foreign origins or destinations.

(2) When the present rail rate differentials were established, ocean rates to and from Boston and New York were lower than those to and from Baltimore and Philadelphia. Accordingly, the differentials were designed, and their effect was, to offset the ocean-rate advantage of the more northerly ports, including the port of Boston.

(3) Commencing in the early twenties and extending to about 1935, ocean rates from and to the different North Atlantic ports became equalized. As a result, the sum of rail and ocean transportation charges through the port of Boston, served by plaintiffs herein, became higher than the sum of those charges through the southern tier ports of Philadelphia, Baltimore and Hampton Roads by an amount equal to the rail rate differentials.

(4) The elimination of the rate handicap at Boston, sought by plaintiffs herein, together with the proposed parity rates at Portland, Albany and New York, would provide an equality of total transportation charges, rail and ocean, between foreign countries and points in Affected Territory for the whole range of North Atlantic ports.

(5) The movement of Affected Territory traffic through Boston under the existing differentials is negligible. Carriers serving the port of Boston, including plaintiffs herein, participate in only 0.1% of the total of export rail traffic from Affected Territory through the several North Atlantic ports, excluding grain. By comparison, carriers serv- [fol. 5106] ing the port of Baltimore participate in 27.6% of such traffic, those serving the port of Philadelphia in 4.3%, and those serving the Hampton Roads ports in 5.4%. Even including grain, Boston railroads carry but 4.4% of all Affected Territory exports, compared with 40.4% at Baltimore, 10.6% at Philadelphia and 12.9% at Hampton Roads.

X.

Notwithstanding its findings referred to in paragraph IX above, the Commission nevertheless concluded in its original report:

"As here presented the respondents' proposal contemplates equalization of the northern tier ports as a group with Baltimore." (sheets 51-52)

Having thus determined to treat the proposed rates at Boston, Portland, Albany and New York *as a group,* the Commission ordered the rates at all of these ports cancelled, having concluded that one of them, New York, did not require rail rate equalization in order to be competitive, thereby refusing to consider on their merits the parity rates at Boston published by these plaintiffs and their connections.

XI.

Following receipt of the Commission's original report and order these plaintiffs commenced this action by the filing of their original complaint on January 11, 1961. Thereafter the Commission by order dated January 16, 1961, attached hereto as Appendix A, postponed the effective date of its order directing cancellation of plaintiffs' equalizing rates, and by order dated March 7, 1961, attached hereto as Appendix B, corrected one of the findings of its original report.

XII.

Subsequently the Commission upon its own motion and by order dated April 11, 1961 reopened the proceedings below for reconsideration upon the present record of the lawfulness of the proposed rates "separately and independently on traffic to and from each northern tier port," which order is attached hereto as Appendix C.

XIII.

Thereafter the Commission under date of June 15, 1961 issued its Report on Reconsideration, attached hereto as Appendix D. In said report the Commission, after making two minor corrections in its original report, and after re- [fol. 5107] peating what it described as the principal facts recited therein, concluded once more to deny plaintiffs the right to make effective their proposed equalizing rates to

and from Boston and made no change in its cancellation order of December 5, 1960. Commissioner Freas concurred in the result reached in the Report on Reconsideration, while Commissioners Webb and Tucker dissented.

XIV.

The Commission, in its Report on Reconsideration, laid emphasis upon the greater average distance between Affected Territory and Boston as compared to the average distance between Affected Territory and Baltimore. It concluded:

> "Such great differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3(1) of the act." (sheet 21)

It also found that "so far as Boston, Portland, and Albany are concerned, such equalization would not materially affect the flow of traffic through any of these ports." (sheet 21)

The Commission then condemned plaintiffs' differential-eliminating rates at Boston upon the single ground that such rates were in violation of Section 3 of the Interstate Commerce Act. It concluded:

> "We are equally persuaded that approval of rate equalization, or of rates to or from any northern tier port which would effect a closer relationship than now exists with the southern tier ports, would result in undue prejudice to the latter ports and in undue preference of northern tier ports.
>
> "Upon reconsideration, we find that the proposed rates to and from Albany, New York, Boston, and Portland, separately and collectively, are not shown to be reasonably related to the present rates on like traffic to and from the southern tier ports, and would cause undue preference of and advantage to the named ports and undue prejudice and disadvantage to the southern tier ports. In other respects, the prior findings are affirmed." (sheets 21-22)

XV.

In resting its conclusion upon relative distance, the Commission utterly ignored the findings of its original report, wherein it stated:

"*Weight to be accorded the distance element.*—There is much evidence of record relating to distances by rail between representative points in the affected territory and the several north Atlantic ports, including Canadian ports; also between them and other interior points and south Atlantic and Gulf ports; and by ocean between these United States ports and representative overseas ports. The respondents and the northern tier port interests deny that they have any significant disadvantage in their rail distances as com- [fol. 5108] pared with the southern tier ports. Such distance disadvantages as they have are much less than the substantial differences in distances to and from some other ports which have a parity or near parity of rates, including the Canadian ports, and the wide differences which obtain where the several south Atlantic and Gulf ports are equalized.

"The southern tier ports, particularly Baltimore, emphasize the advantage in distance which they have to and from certain points in the affected territory. The average of the short-line distances from class-rate base points in the affected territory is 698 miles to Baltimore, 750 miles to Philadelphia, 804 miles to New York, and 921 miles to Boston. The average distance between Hampton Roads ports and the affected territory is 883 miles, as compared with 853 miles between that territory and New York. It is apparent that considerable disregard of rail distances is characteristic of all port adjustments, as it was in the establishment of the rates here dealt with. See *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I.C.C. 691, 696. In considering this matter in an early proceeding, *In the Matter of Differential Rates, supra* (1905), and the justness of the suggestion that each port should be given the rate to which its location entitles it, this Commission observed that traffic does not

stop at the ports but moves to foreign destinations, that more important was the fact that as seaports the four large cities from Boston to Baltimore, inclusive, had a fundamental advantage of location which entitled them to participate in the foreign trade, and that the public interest required that this right be recognized. The conclusion reached (page 77) was that, in the public interest, the rates should be so adjusted 'that all the ports and the various lines serving them may fairly compete for this traffic.' That this is also the purpose of the 1935 amendment to section 3 of the act was indicated in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co., supra; Nueces County Nav. District No. 1* v. *Baltimore & O. R. Co.*, 223 I.C.C. 75, 96; and *Port of New York Authority* v. *Baltimore & O. R. Co.*, 248 I.C.C. 165, 179. In the *Albany* case, at page 162, we said:

> The port rates * * * have, as their chief objective, the maintenance of a competitive relation between the ports. They are not distance rates. * * * adherence to the distance principle is incidental, and always gives way when necessary to the maintenance of the differential relation between the ports." (sheets 39-41)

The Commission in so resting its conclusion further ignored the basic distinction between rates which carriers may *voluntarily* publish in an endeavor to meet competition and those which they may be *required* to publish by the Commission. This distinction was called to the Commission's attention in *New York Central Railroad Company, et al.* v. *United States, et al.*, 99 F. Supp. 394, 398, 402 (1951), affirmed 342 U. S. 890.

XVI.

The record in this proceeding clearly establishes the lawfulness of plaintiffs' proposed differential-eliminating rates at Boston, and is devoid of any substantial evidence which would warrant a contrary conclusion.

[fol. 5109] XVII.

Plaintiffs allege that the said order of the Commission, dated December 5, 1960, is based upon errors of law, is not supported by evidence or adequate findings, exceeds the statutory power of the Commission, and is unlawful, arbitrary, capricious, null and void, for the following reasons:

(1) The Commission's order rests upon an erroneous conclusion of law, namely, that "Such great differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3(1) of the act." (Appendix D, sheet 21)

(2) The order does not rest upon evidentiary findings which are essential to support a conclusion that the proposed rates are unlawful under the Interstate Commerce Act.

(3) The order rests upon an unauthorized attempt by the Commission to control the volume and direct the flow of traffic moving through the several competing ports.

(4) The order unlawfully denies to plaintiff railroads the right to meet the rates of competing railroads by an adjustment of rates within the zone of reasonableness and without undue or unreasonable preference or prejudice.

(5) The Commission failed to recognize that, as a matter of managerial discretion, railroads may voluntarily make rate changes which they cannot be compelled by law to make.

(6) The Commission arbitrarily and without authority has required plaintiffs to maintain, on import and export traffic between Boston and Affected Territory, differentially higher rates than those maintained by competing railroads serving Portland, Maine, Philadelphia, Baltimore and Hampton Roads for the purpose of diverting such traffic to said carriers, and for the added purpose of continuing and perpetuating the rate advantage of said carriers over plaintiff railroads serving the port of Boston.

(7) The order of the Commission requiring cancellation of the suspended schedules proposing rates via Boston equalized with those via Baltimore is invalid because there are no factual findings to support such order.

[fol. 5110] (8) The order of the Commission requiring cancellation of the suspended schedules is invalid because the Commission has exceeded the power delegated to it by Congress with respect to regulating rates.

(9) The order of the Commission is invalid in so far as it is based upon a finding that the proposed rate reduction would not materially attract foreign traffic over the lines of plaintiffs herein.

(10) The order of the Commission is inconsistent with its findings.

(11) The Commission by its order has failed to comply with the National Transportation Policy as declared by Congress and set forth at the beginning of the Interstate Commerce Act: "To promote safe, adequate, economic and efficient service, and foster sound economical conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preference or advantages, or unfair or destructive competitive practices; . . . all to the end of developing, coordinating and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States of America, of the Postal Service, and of the national defense."

XVIII.

The Commission threatens to enforce its said order unless it is enjoined, set aside, annulled and suspended. Said order and its enforcement will cause immediate and irreparable injury to the plaintiffs, and the plaintiffs are without an adequate remedy at law.

Wherefore, plaintiffs pray:

1. That process may issue against the United States of America and the Interstate Commerce Commission.

2. That a Court constituted as required by Title 28, U. S. Code, sections 2284 and 2321-2325, consisting of three judges, be convened and that said Court so constituted and convened shall hear this petition upon due and legal notice to defendants.

3. That the operation, enforcement and execution of said order be permanently enjoined and said order be permanently set aside, annulled and suspended.

[fol. 5111] 4. That plaintiffs recover their proper costs.

5. That plaintiffs have such other and further relief in the premises as to equity may appertain and as may be deemed meet and just by this Honorable Court.

Respectfully submitted,

Neal Holland, Robert G. Bleakney, Jr., 150 Causeway Street, Boston 14, Massachusetts, Attorneys for Plaintiffs.

Of Counsel: James W. Grady, Thomas P. Hackett, 54 Meadow Street, New Haven, Connecticut.

[fol. 5112] Appendix "A" to amended complaint—Order dated January 16, 1961 postponing the compliance date of the I.C.C. order of December 5, 1960 omitted. Printed side folio 5072, page 3833 supra.

[fol. 5113] Appendix "B" amended to complaint—Order dated March 7, 1961 correcting one of the findings in report of December 5, 1960 omitted. Printed side folio 5061, page 3822 supra.

[fol. 5114] Appendix "C" to amended complaint—Order dated April 11, 1961 reopening the proceedings for reconsideration, etc. omitted. Printed side folio 5075, page 3835 supra.

[fol. 5115] Appendix "D" to amended complaint—Report of the ICC on reconsideration, dated June 15, 1961 omitted. Printed side folio 5076, page 3836 supra.

[fol. 5116]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

MASSACHUSETTS PORT AUTHORITY, Plaintiff-Intervenor

AMENDED COMPLAINT OF MASSACHUSETTS PORT AUTHORITY, PLAINTIFF-INTERVENOR—Filed July 12, 1961

I. Plaintiff-Intervenor, Massachusetts Port Authority, is a body politic and corporate created by the provisions of Chapter 465 of the Acts of 1956 of The Commonwealth of Massachusetts, having its principal office in the City of Boston in said Commonwealth. It brings this action against United States of America and Interstate Commerce Commission (hereinafter called the Commission) for the purpose of enjoining, setting aside, annulling and suspending an order of the Commission dated December 5, 1960, entered in proceedings before the Commission entitled—*Equalization of Rates at North Atlantic Ports*—being numbered Investigation and Suspension Docket No. 6615 in the dockets of said Commission, and—Import and Export Rates From and To North Atlantic Ports—being numbered Fourth Section Application No. 32204 in said dockets. By virtue of the provisions of said Chapter 465 and of Chapter 599 of the [fol. 5117] Acts of 1958, plaintiff-intervenor, among other things, has administrative charge of the Port of Boston and has the responsibility of protecting and promoting the trade and commerce of the Port of Boston and, in connection therewith, of endeavoring to foster and support the

establishment and maintenance of fair and equitable transportation rates from and to said port competitive with those applicable from and to other North Atlantic ports. Pursuant to the authority conferred upon it by law, plaintiff-intervenor, with permission of the Commission, intervened in, and became a party in interest to, the proceedings hereinbefofe referred to and has actively participated in said proceedings.

II. This action is brought pursuant to, and jurisdiction herein is conferred upon this Court by, the provisions of the Judicial Code (28 U.S.C. Sections 1336, 2284 and 2321 and 2322 to 2325, both inclusive, as amended). The United States of America is made a party hereto pursuant to said Section 2322.

III. The venue of this action is in this Court by virtue of the provisions of the Judicial Code (28 U.S.C. Section 1398, as amended) in that the order of the Commission referred to in paragraph I hereof related to rates published by the plaintiffs herein, including Boston and Maine Railroad, which is incorporated, and has its principal office, in the judicial district of this Court.

IV. The Commission is an administrative tribunal of the United States of America created by, and having the powers and duties conferred upon it in, the act, as amended, entitled An Act to Regulate Commerce—approved February 4, 1887 (49 U.S.C. Sections 1 et seq.), now known as The Interstate Commerce Act (hereinafter called the Act).

V. At the present time, speaking generally, differentially lower rail rates are in effect, on export and import traffic moving between Affected Territory* and the Port of

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* Affected Territory is described in the December 5, 1960 Report of the Commission as follows:

"The territory to and from which equalization of the northern tier ports with Baltimore is initially proposed is roughly that represented by central freight association territory, including Illinois freight association territory and southern Wisconsin, hereinafter called the affected or differential territory. It includes territory on and West of a line extending from a

[fol. 5118] Baltimore than on traffic moving between that territory and the Ports of Boston, New York and Albany and on export traffic moving between Affected Territory and the Port of Portland. The differentials are described in detail on Sheet 5 of the Commission's original Report.*

The present North Atlantic rail-rate port differential adjustment was originally established many years ago to offset a corresponding ocean rate differential relationship unfavorable to the carriers serving North Atlantic ports south of New York and favorable to the Port of New York and ports north thereof. By so offsetting ocean rate disadvantages to ports south of New York, the rail rate differential effected an equalization of the through rail-ocean cost to shippers regardless of the North Atlantic port through which the traffic might move. Thus, the aim of the rail-rate differential, as originally established by the carriers serving the North Atlantic ports, was to effect equalization of through rail-ocean shipper transportation cost and thereby to enable effective competition among themselves for Affected Territory traffic.

Commencing in the early 1920's and extending to about 1935, ocean rates from and to the major North Atlantic ports became equalized, but the North Atlantic port rail differentials continued in effect. Accordingly, total shipper [fol. 5119] transportation cost through Boston, New York and other ports north of New York became greater by the amount of the rail-rate differentials than such cost through the ports south of New York, and shippers through Boston, New York and other ports north of New York were

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point just west of Buffalo through Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in Kentucky on the lines of The Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio." (Sheet 3)

* References herein to the Commission's original Report are to its Report dated December 5, 1960, pursuant to which its order of December 5, 1960 was issued. The Commission's Report of June 15, 1961 is herein called its Report on Reconsideration.

subjected to a cost handicap in the amount of the rail-rate differentials.

VI. In June, 1955 carriers participating in the movement of export and import traffic between Boston and each of the major North Atlantic ports from New York north, on the one hand, and Affected Territory, on the other hand, having come to the conclusion that effective competition for Affected Territory traffic required the elimination of the rail-rate handicap incident to the continuance of the rail differential after the equalization of ocean rates, proposed parity rates with Baltimore through each of said ports. Tariffs equalizing the rates were published to become effective July 10, 1956 and simultaneously the carriers serving North Atlantic ports south of New York, published differential restoring rates effective as of the same date.

VII. The Commission thereupon suspended, on protest, all of the equalizing and differential-restoring rates and instituted the proceedings below, from the order in which this appeal has been taken, to consider the lawfulness of such equalizing and of such differential-restoring rates.

VIII. Hearings were held before an Examiner, and his proposed report was issued on or about October 10, 1959. Exceptions were duly taken thereto by various parties, and on December 5, 1960 the Commission handed down its original Report and its order, copies of which are attached as "Appendix A" to the original complaint herein of Boston and Maine Railroad and The New York, New Haven and Hartford Railroad Company.

IX. In its original Report the Commission found and concluded that:

> (1) The carriers serving each of the North Atlantic ports are entitled to an opportunity to compete [fol. 5120] effectively for Affected Territory export and import traffic with carriers serving each of the other North Atlantic ports (Sheets 7-10; 74-75); relative rail distances are not controlling in port competitive adjustments but rather rates should be so adjusted "that all the ports and the various lines serv-

ing them may fairly compete for this traffic;" "this is also the purpose of the 1935 amendment to Section 3 of the act" (Sheets 40-41), and, illustrative of the foregoing is the fact that the North Atlantic Port Differential Adjustment was originally established in such a competitive endeavor to equalize the through transportation cost to shippers regardless of the North Atlantic port through which shipment was made, by offsetting against the then ocean-rate handicap of the ports south of New York a corresponding rail-rate handicap through the Ports of Boston, New York and other ports north of New York (Sheets 7-8);

(2) When the differentials were established, they were adopted only as a temporary expedient and it was contemplated that, when they should "tend to deprive any of the seaports affected by them of the proportion of business that would come naturally to it under the operation of normal competition, the want of equity in the rates will appear and it will be right to modify or perhaps abolish them" (Sheets 10, also 15-16);

(3) Ocean rates along the North Atlantic range have, at least since 1935, been equalized to and from all the major North Atlantic ports, but the rail-rate differential still continues, thus terminating through transportation cost equalization theretofore available to shippers and thereby making the aggregate transportation cost to shippers more favorable through the Ports of Baltimore, Philadelphia and Hampton Roads than through the Ports of Boston and New York and other ports north of New York (Sheet 8);

[fol. 5121] (4) Pursuant to their claim of a right to compete effectively for Affected Territory traffic (Sheet 13), the carriers serving the Port of Boston as well as the carriers serving the Port of New York and other ports north thereof, together with their respective connections, filed the parity rates in issue in the proceeding below (Sheet 2) and this is the first instance

in which port railroads have themselves voluntarily undertaken to alter the existing differential arrangement (Sheet 11);

(5) There are two types of ocean-borne commerce—bulk and general cargo—of which by far the largest in volume is bulk cargo; the proportion of bulk to total traffic is increasing (Sheet 17) and the principal bulk commodities moving between Affected Territory and the North Atlantic ports, rates with respect to which were in issue in the proceeding below, are grain and ores and concentrates (other than iron ore) (Appendix F);

(6) Bulk cargo provides important bottom loading for ships (Sheets 17-18, 71) and ship sailings to and from any port are flexible and are largely dependent on the availability of cargo, so that, if the volume of traffic at a port is adequate, good and frequent services will be available (Sheet 42);

(7) Bulk traffic, which is the predominant traffic moving between Affected Territory and the North Atlantic ports is particularly sensitive to total rail-ocean transportation costs and therefore to a rail-rate differential (Sheets 42-43), "As bulk commodities, because of their low value, are peculiarly sensitive to transportation cost, the differential has greater influence on their movement than on general cargo" (Sheet 70);

(8) Of the import traffic involved in the proceeding below moving between Affected Territory and the [fol. 5122] North Atlantic ports as a whole, 75.8% moves through the Ports of Baltimore, Philadelphia or Hampton Roads; of the export traffic so involved and so moving, 63.7% moves through said ports; of bulk ores so involved, such ores being the principal import into Affected Territory, 98.1% of the total moves either through Baltimore, Philadelphia or Hampton Roads, and of grain, the principal export from Affected Territory, 83.5% of the total moving

through any North Atlantic port moves through the southern tier ports (Appendix F).

(9) The Port of Boston needs bulk and bottom cargoes to attract ships and the lack of such cargo and, as a consequence, the limited sailings at Boston, deter shippers in its immediate hinterland from using that port "Causing further reductions in ship calls" (Sheet 53);

(10) Under the existing differential adjustment, little traffic moves between the Port of Boston and Affected Territory (Sheets 52, 58); thus, of the total import traffic involved in the proceeding below, moving between Affected Territory and the North Atlantic ports as a whole, only 6/10 of 1% moves through Boston; of the total export traffic so involved and so moving, only 4.4% moves through Boston, of which all but 3256 tons is grain; and, although during the test period 7.7% of the grain exported from Affected Territory through the North Atlantic ports moved through Boston, the movement was insignificant in comparison with the grain movement through the southern tier ports, which was 83.5% of the total.

X. Notwithstanding the foregoing findings and conclusions, the Commission in its order of December 5, 1960 directed cancellation of the proposed parity rates, including [fol. 5123] the parity rates published by the Boston carriers and their connections, and this without considering the proposed Boston rates on their merits. It found that

"As here presented the respondents' proposal contemplates equalization of the northern tier ports *as a group* with Baltimore." (Emphasis supplied) (Sheets 51-52)

With this finding as a background, the Commission considered the New York, Boston, Portland and Albany rates "as a group" and since it concluded that New York did not require equalization of rates to meet the competition of the

ports south of New York, it rejected all proposed parity rates.

XI. After the commencement of the above-entitled proceeding, the Commission voluntarily postponed the effective date of its order of cancellation until further order by it.

XII. Subsequently and after this plaintiff-intervenor had, with leave of this Court, filed its Intervening Complaint herein, upon further consideration of its prior decision and under date of April 11, 1961, the Commission reopened the proceeding below for reconsideration, on the record as made, of the lawfulness of the proposed rates separately and independently on traffic to and from each northern tier port.

XIII. Thereafter and under date of June 15, 1961, the Commission handed down its Report on Reconsideration. In that Report the Commission made (Sheet 2) two minor corrections in Appendix E to its original Report; restated what it characterized as "the principal facts" recited in the original Report; emphasized the greater average distance between Affected Territory points and Boston than between the same points and Baltimore, and concluded:

> "Such great differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3 (1) of the act. What has just been said applies also, in greater or less degree, to each of the other northern tier ports." (Sheet 21)

adding,

> [fol. 5124] "Moreover, for the reasons previously discussed, the evidence is persuasive that, so far as New York is concerned, rate equalization is not required to enable that port to meet the competition of the southern tier ports, and that, so far as Boston, Portland, and Albany are concerned, such equalization would not materially affect the flow of foreign traffic through any of those ports." (Sheet 21)

The Commission's ultimate conclusion was that the proposed parity rates were violative of Section 3 of the Interstate Commerce Act and condemned the rates solely on this ground. Thus, it said:

> "Upon reconsideration we find that the proposed rates to and from Albany, New York, Boston, and Portland, separately and collectively, are not shown to be reasonably related to the present rates on like traffic to and from the southern tier ports, and would cause undue preference of and advantage to the named ports and undue prejudice and disadvantage to the southern tier ports. In other respects, the prior findings are affirmed." (Sheets 21-22)

In stressing relative differences in distance in its Report on Reconsideration, the Commission wholly ignored the findings in this regard in its original Report, wherein it stated:

> "The respondents and the northern tier port interests deny that they have any significant disadvantage in their rail distances as compared with the southern tier ports. Such distance disadvantages as they have are much less than the substantial differences in distances to and from some other ports which have a parity or near parity of rates, including the Canadian ports, and the wide differences which obtain where the several south Atlantic and Gulf ports are equalized.
>
> "The southern tier ports, particularly Baltimore, emphasize the advantage in distance which they have to and from certain points in the affected territory. The average of the short-line distances from class-rate base points in the affected territory is 698 miles to Baltimore, 750 miles to Philadelphia, 804 miles to New York, and 921 miles to Boston. The average distance between Hampton Roads ports and the affected territory is 883 miles, as compared with 853 miles between that territory and New York. It is apparent that considerable disregard of rail distances is characteristic of all port adjustments, as it was in the establishment of the rates here dealt with. See *Baltimore Chamber of Commerce*

v. *Ann Arbor R. Co.*, 159 I.C.C. 691, 696. In considering this matter in an early proceeding, *In the Matter* [fol. 5125] *of Differential Rates, supra* (1905), and the justness of the suggestion that each port should be given the rate to which its location entitled it this Commission observed that traffic does not stop at the ports but moves to foreign destinations that more important was the fact that as seaports the four large cities from Boston to Baltimore, inclusive, had a fundamental advantage of location which entitled them to participate in the foreign trade, and that the public interest required that this right be recognized. The conclusion reached (page 77) was that, in the public interest, the rates should be so adjusted that all the ports and the various lines serving them may fairly compete for this traffic. That this is also the purpose of the 1935 amendment to section 3 of the act was indicated in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co., supra; Nueces County Nav. District No. 1* v. *Baltimore & O. R. Co.*, 223 I.C.C. 75, 96, and *Port of New York Authority* v. *Baltimore & O. R. Co.*, 248 I.C.C. 165, 179. In the *Albany* case, at page 162, we said:

> The port rates * * * have, as their chief objective, the maintenance of a competitive relation between the ports. They are not distance rates. * * * adherence to the distance principle is incidental, and always gives way when necessary to the maintenance of the differential relation between the ports." (Sheets 39-41)

and, in falling into its error of overstressing, in its Report on Reconsideration, relative distances, the Commission failed to recognize the distinction between rates which carriers may voluntarily publish to meet competition (the proposed voluntarily published parity rates) and rates which carriers may be *required* to publish (the rates involved in the *complaint* cases cited by the Commission). Thus, the Commission said just prior to the language above quoted with regard to distances:

> "In general, in the rare instances where rate changes in port relationships have been *required* by us, distance has been an important consideration." (Sheet 21)

thereby ignoring the teachings of this Court in *New York, Central Railroad Company, et al.* v. *United States, et al.*, 99 F. Supp. 394 (D. Mass. 1951), wherein this Court pointed out:

> "The difference in physical operations might indicate that the rates to the ports would not *have to be* the same; to that extent, the Commission's statement that [fol. 5126] the terminal operations are sufficiently different to *warrant* the differential may well be accurate. And of course, this was all the Commission had to decide in the 1941 proceeding, for there the carriers were defending the differential against attack by the New York port interests. Port of New York Authority v. Baltimore & Ohio Railroad Co., 248 I.C.C. 165 (1941). The present proceeding is quite different. Here it was not sufficient for the Commission to find that the dissimilar terminal operations *warrant* the carriers in maintaining a differential; the Commission had to find something more, namely, that the difference in terminal operations *requires* the carriers to maintain the differential in order to avoid violation of some specified section of the statute." (p. 402) (Emphasis supplied)

XIV. The record in this proceeding establishes unequivocally that the proposed parity rates applicable to the movement of import and export traffic between Boston and Affected Territory are lawful, and the record is devoid of any substantial evidence which would warrant a conclusion to the contrary. The record further establishes that said proposed rates are no lower than needed to be competitive and to secure for the carriers publishing the same and for the Port of Boston a fair share of import and export traffic destined for and originating in Affected Territory; that at rates higher than those from Baltimore no substantial amount of such traffic does or can move through the Port of Boston, and that said proposed rates to and from Boston

are not so low as to prevent competition for Affected Territory export-import traffic by carriers participating in the movement of such traffic through any of the other major North Atlantic ports.

XV. The Commission's order is based on errors of law, is not supported by the evidence or by adequate findings and is arbitrary, unlawful and void for the following additional reasons:

1. The Commission's order rests upon an erroneous conclusion of law, namely, that "Such great differences in [fol. 5127] distances, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3 (1) of the act." (Sheet 21).

2. The order does not rest upon evidentiary findings, which are essential to support a conclusion that the proposed rates are unlawful under the Interstate Commerce Act.

3. The order unlawfully denies to the railroads participating in export-import rates between Boston and Affected Territory the right, in their managerial discretion, to meet the rates of competing railroads by an adjustment of rates within the zone of reasonableness and without undue preference or prejudice.

4. The Commission failed to recognize that, as a matter of managerial discretion, railroads may voluntarily make rate changes which they cannot be required to make.

5. The order rests upon an unauthorized attempt by the Commission to control the volume and direct the flow of traffic moving through the several competing ports.

6. The Commission's order is inconsistent with its findings.

7. The order of the Commission is invalid in so far as it is based upon a finding that the proposed rate reduction would not materially attract foreign traffic over the lines of plaintiffs herein.

XVI. The Port of Boston and the trade and commerce of said port and the carriers serving said port, will be irreparably damaged if said order of the Commission, dated December 5, 1960, be not permanently enjoined, set aside, [fol. 5128] annulled and suspended, and plaintiff-intervenor herein is without an adequate remedy at law.

Wherefore, plaintiff-intervenor, Massachusetts Port Authority, prays:

(1) That process may issue against United States of America and the Interstate Commerce Commission;

(2) That there be convened a District Court of three judges pursuant to the provisions of the Judicial Code (28 U.S.C. Section 2284, as amended) and that said Court, so convened, hear and determine the action commenced by the filing of this Complaint;

(3) That this Court, upon hearing of this action, enter a decree herein permanently enjoining, setting aside, annulling and suspending the order of the Commission dated December 5, 1960;

(4) That plaintiff-intervenor have a recovery of the proper costs of this action and

(5) That plaintiff-intervenor have such other and further [fol. 5129] relief as in the premises may be deemed to be fit and proper.

Respectfully submitted

Henry E. Foley, 10 Post Office Square, Boston 9, Massachusetts, Counsel for Massachusetts Port Authority, Plaintiff-Intervenor.

Of Counsel: Foley, Hoag & Eliot, 10 Post Office Square, Boston 9, Massachusetts.

Dated: July 12, 1961.

[fol. 5130]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAIROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA

and

INTERSTATE COMMERCE COMMISSION, Defendants.

THE DELAWARE AND HUDSON RAILROAD CORPORATION, ERIE-LACKAWANNA RAILROAD COMPANY, GRAND TRUNK RAILWAY SYSTEM—LINES EAST (CANADIAN NATIONAL RAILWAY COMPANY), THE NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, and NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, Plaintiff-Intervenors.

Plaintiff-Intervenors' Amended Complaint

AMENDED COMPLAINT OF THE DELAWARE AND HUDSON RAILROAD COMPANY, PLAINTIFF-INTERVENORS—
Filed July 12, 1961
(Equitable Relief Sought)

I.

The Plaintiff-Intervenors, The Delaware and Hudson Railroad Corporation; Erie-Lackawanna Railroad Company; Grand Trunk Railway System—Lines East (Canadian National Railway Company); The New York Central Railroad Company; The New York, New Haven and Hartford Railroad Company; and New York, Susquehanna and Western Railroad Company, bring this complaint against the United States of America and the Interstate Commerce

Commission for the purpose of suspending, enjoining, setting aside, and annulling the order, more particularly [fol. 5131] hereinafter described, issued by the Interstate Commerce Commission (hereinafter referred to as the "Commission"), dated December 5, 1960, in a proceeding before the Commission known as I. & S. Docket No. 6615, *Equalization of Rates at North Atlantic Ports,* and Fourth Section Application No. 31104, *Import and Export Rates from and to North Atlantic Ports,* a copy of which order is attached and marked Appendix A.

II.

Plaintiff-Intervenor, The Delaware and Hudson Railroad Corporation is a common carrier railroad incorporated under the laws of the State of New York and engaged in the transportation of passengers and property in the States of New York, Pennsylvania and Vermont. It serves the port of Albany directly and through its connections transports export/import freight between the midwestern territory, hereinafter referred to as Affected Territory*, and the North Atlantic ports north of and including the port of New York, chief of which are the ports of New York, Albany, Boston, and Portland, hereinafter sometimes collectively called the northern tier ports.

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* The Commission more precisely described the territory affected by the rates in issue at page 691 of its report dated December 5, 1960, 311 I.C.C. 689, as follows:

> "The territory to and from which equalization of the northern tier ports with Baltimore is initially proposed is roughly that represented by Central Freight Association territory, including Illinois Freight Association territory and southern Wisconsin, hereinafter called the affected or differential territory. It includes territory on and west of a line extending from a point just west of Buffalo through Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof, certain points in Kentucky on the lines of The Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio."

[fol. 5132]

III.

Plaintiff-Intervenor, The New York Central Railroad Company, is a railroad corporation organized and existing under the laws of the State of Delaware. It is a common carrier engaged in the transportation of property and passengers by railroad in interstate commerce, operating in the states of New York, Pennsylvania, Ohio, Indiana, Michigan, Illinois, Massachusetts, West Virginia, Missouri, Kentucky, New Jersey, and the Dominion of Canada. It has direct routes in the transportation of export/import freight to and from Affected Territory through the ports of New York, Boston, and Albany; and through connecting rail carriers serves the port of Portland, Maine, and other North Atlantic ports.

IV.

Plaintiff-Intervenor, Erie-Lackawanna Railroad Company, is a corporation organized under the laws of the State of New York. The Delaware, Lackawanna and Western Railroad Company, a corporation of the Commonwealth of Pennsylvania and a party to the proceedings before the Interstate Commerce Commission, was merged into Erie Railroad Company, a corporation of the State of New York and a party to the proceedings before the Interstate Commerce Commission, in accordance with a Joint Agreement of Merger dated June 24, 1959, and the order of the Interstate Commerce Commission in Finance Docket No. 20707 (*Erie Railroad Company—Merger, Etc.—Delaware, Lackawanna & Western Railroad Company*), dated September 13, 1960. The corporation which survived upon merger was Erie Railroad Company, the name of which effective upon the consummation of the merger on October 17, 1960, was changed to Erie-Lackawanna Railroad Company. It has direct routes in the transportation of export/import freight between Affected Territory and the port of New York, and through its connections serves the other ports of the North Atlantic range north of New York.

[fol. 5133]

V.

Plaintiff-Intervenor, The New York, New Haven and Hartford Railroad Company, is a consolidated railroad corporation organized and existing under the laws of the States of Massachusetts, Rhode Island and Connecticut, and authorized to do business in the State of New York. It is a common carrier of property by railroad subject to Part I of the Interstate Commerce Act (49 U. S. Code, Chapter 1), operating in each of the foregoing states. In connection with the lines of other railroads, it offers a rail transportation service for the movement of import and export traffic between the ports of New York and Boston and points and places throughout the continental United States, including those in Affected Territory.

VI.

Plaintiff-Intervenor, New York, Susquehanna and Western Railroad Company, is a railroad corporation organized and existing under the laws of the State of New Jersey. It serves the port of New York and with its connections transports export/import traffic between Affected Territory and the port of New York as well as other northern tier ports.

VII.

Plaintiff-Intervenor, Grand Trunk Railway System—Lines East (Canadian National Railway Company), is a Canadian corporation authorized to do business in the State of Maine, which serves directly the port of Portland, Maine, and through its connections transports export/import traffic between Affected Territory and the remaining northern tier ports.

VIII.

This action is brought under, the United States is made a defendant herein, and the jurisdiction of this Court is conferred by, United States Code, Title 28, Sections 1336, 1398, 2284, 2321 through 2325, inclusive.

[fol. 5134]

IX.

The venue of this action is in this Court, pursuant to the provisions of U. S. Code, Title 28, Section 1398, referred to above, inasmuch as plaintiff Boston and Maine Railroad is incorporated in the Commonwealth of Massachusetts and maintains its principal office in Boston, Massachusetts, within the jurisdiction of this Court.

X.

The Interstate Commerce Commission is an administrative tribunal, created by the Act to Regulate Commerce approved February 4, 1887, 24 Stat. 383, and amendments thereto, now known as the Interstate Commerce Act, with specifically vested powers and duties respecting interstate commerce under said Interstate Commerce Act and the various acts amendatory thereof and supplemental thereto.

XI.

The reports and order herein complained of and which the plaintiffs and plaintiff-intervenors seek to have enjoined, set aside, suspended and annulled, are the result of proceedings which arose when the carriers serving the northern tier ports sought to establish, effective July 10, 1956, rates on export/import traffic moving between Affected Territory and the northern tier ports the same as the rates maintained by the railroads serving the port of Baltimore. The proposed reductions were generally 3 cents per 100 pounds, except on flour and grain. With respect to the latter, the reductions were 1 and 1.5 cents per 100 pounds, respectively. Soon after the publication of these reductions; the competing railroads serving the ports of Baltimore, Md., Hampton Roads, Va., and Philadelphia, Pa., hereinafter sometimes referred to as the "southern tier ports", published tariff schedules which were designed to restore the differentials they enjoyed. All of the schedules [fol. 5135] were ordered suspended by the Commission and made the subject of an investigation.

XII.

When the differentials above described were established, there were higher ocean rates to and from Baltimore and Philadelphia than to and from the northern tier ports. The differentials were designed, and their effect was, to compensate for the differences in these ocean rates in favor of the northern tier ports. They tended to produce equal total transportation charges between an interior point and the foreign origin or destination over all routes through the several ports, affording the different railroads and ports competitive rates. Beginning in the early twenties and extending to about 1935, the ocean rates to and from the different ports were equalized. Consequently, the sum of the rail and ocean transportation charges through the northern tier ports served by plaintiffs and plaintiff-intervenors became higher than the sum of those charges through Baltimore by the amounts of the above differentials.

XIII.

Hearings were held in connection with both sets of tariff schedules and a proposed report was issued by a Commission hearing examiner. Exceptions to the examiner's proposed report were filed by plaintiffs herein, and oral argument was held before the Commission on May 24, 1960. On January 3, 1961, the Commission (Commissioners Freas and McPherson concurring and Commissioner Webb dissenting) served the initial report and the order herein complained of. The Commission's report, 311 I.C.C. 689, dated December 5, 1960, is, for convenience, attached hereto as Appendix B. In that report and order, the Commission required that the rail carriers serving the northern tier ports cancel their tariff schedules on or before January 23, 1961, [fol. 5136] upon not less than one day's notice to the Commission and to the general public by filing and posting in the manner prescribed under section 6 of the Interstate Commerce Act.

Subsequent to the filing of the original complaints in this proceeding and the receipt of answers thereto by the United States of America, the Commission and intervening defen-

dants, the Commission reopened the proceeding for further consideration on the existing record and issued its report on reconsideration dated June 15, 1961, amplifying and affirming the findings in its prior report. Commissioner Freas separately concurred in the result and Commissioners Webb and Tucker joined in a dissenting opinion. For convenience, the report on reconsideration is attached hereto as Appendix C.

XIV.

The Commission's findings in its decision dated December 5, 1960, 311 I.C.C. 689, served upon the parties on January 3, 1961, show that:

(1) The schedules described in Paragraph XI hereof which are now under suspension and subject to cancellation on January 23, 1961, pursuant to the Commission's report and order dated December 5, 1960, were proposed to equalize the rates on import and export traffic, as described in said schedules, moving via rail between Affected Territory, on the one hand, and New York, N. Y., and all other ports north thereof, on the other hand, with the rates applicable via Baltimore. The present rail rates on the involved traffic moving to and from New York and all other North Atlantic ports north thereof from and to Central Territory are generally 3 cents per 100 pounds higher than those to and from Baltimore, with the exception of the rates on grain, which are generally 1.5 cents per 100 pounds higher.

(2) As stated in the Commission's report, these differentials were established when there were ocean rates to and from Baltimore higher than the ocean rates to and [fol. 5137] from New York and North Atlantic ports north thereof. "The differentials were designed, and their effect was, to compensate for the differences in these ocean rates in favor of the northern tier ports. Thus, they tended to produce equal total transportation charges between an interior point and the foreign origin or destination over all routes through the several ports, affording the different railroads and ports competitive rates." (311 I.C.C. 693-4.) As the report further states, beginning in the twenties and

extending to about 1935, the ocean rates to and from the different ports were equalized. Consequently, the sum of the rail and ocean transportation charges through the northern tier ports became higher than the sum of those charges through Baltimore by the amounts of the above differentials. The rate schedules here involved, if made effective, would abolish the differentials and would generally provide an equality of aggregate transportation charges, rail and ocean, between foreign countries and points in Affected Territory for the whole range of North Atlantic ports, including Albany. (311 I.C.C. 694.)

(3) As shown in Appendix D to the Commission's report, the percentage of total United States cargo moving through the New York Customs District, both import and export, has declined tremendously between 1923 and 1956, the last year for which figures are included in this record. As further shown in Appendix F to the Commission's report, the railroads serving New York and the other northern tier ports in the composite year August 1, 1955, to July 31, 1956, handled 36.3 percent of the exports to and from the territory covered by the schedules and only 24.2 percent of the imports, while 63.7 percent of such exports and 75.8 percent of such imports were handled by the railroads serving the southern tier ports.

(4) The Commission concluded at page 741 of its report that "The present differentials have long served to retain a reasonable competitive relationship between the principal [fol. 5138] port groups and should be maintained." In its ultimate findings, the Commission found that the proposed equalized rates "are not shown to be reasonably related to the present rates" and that the proposed equalized rates "would result in undue preference of and advantage to the northern tier ports as a group and in undue prejudice and disadvantage to the southern tier ports." (311 I.C.C. 741-2.)

(5) At sheets 20 and 21 of the Commission's report on reconsideration, dated June 15, 1961, Appendix C hereto, there is a discussion of the average distances between Affected Territory and the various North Atlantic ports. The discussion concludes with the observation that "Such great

differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3(1) of the act." This statement conflicts with the discussion and case authority cited in its initial report, 311 I.C.C. 689, at pages 715 and 716, where the following discussion appears:

"*Weight to be accorded the distance element.*—There is much evidence of record relating to distances by rail between representative points in the affected territory and the several North Atlantic ports, including Canadian ports; also between them and other interior points and South Atlantic and Gulf ports; and by ocean between these United States ports and representative overseas ports. The respondents and the northern tier port interests deny that they have any significant disadvantage in their rail distances as compared with the southern tier ports. Such distance disadvantages as they have are much less than the substantial differences in distances to and from some other ports which have a parity or near parity of rates, including the Canadian ports, and the wide differences which obtain where the several South Atlantic and Gulf ports are equalized.

"The southern tier ports, particularly Baltimore, emphasize the advantage in distance which they have to and from certain points in the affected territory. The average of the short-line distances from class-rate base points in the affected territory is 698 miles to Baltimore, 750 miles to Philadelphia, 804 miles to New York, and 921 miles to Boston. The average distance between Hampton Roads ports and the affected territory is 883 miles, as compared with 853 miles between that territory and New York. It is apparent that considerable disregard of rail distances is characteristic of all port adjustments, as it was in the establishment of the rates here dealt with. See *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I.C.C. 691, 696. In considering this matter in an early proceeding, *In the Matter of Differential Rates, supra* (1905), and the [fol. 5139] justness of the suggestion that each port

should be given the rate to which its location entitles it, this Commission observed that traffic does not stop at the ports but moves to foreign destinations, that more important was the fact that as seaports the four large cities from Boston to Baltimore, inclusive, had a fundamental advantage of location which entitled them to participate in the foreign trade, and that the public interest required that this right be recognized. The conclusion reached (page 77) was that, in the public interest, the rates should be so adjusted 'that all the ports and the various lines serving them may fairly compete for this traffic.' That this is also the purpose of the 1935 amendment to section 3 of the act was indicated in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co., supra; Nueces County Nav. District No. 1* v. *Baltimore & O. R. Co.*, 223 I.C.C. 75, 96; and *Port of New York Authority* v. *Baltimore & O. R. Co.*, 248 I.C.C. 165, 179. In the *Albany* case, at page 162, we said:

> 'The port rates * * * have, as their chief objective, the maintenance of a competitive relation between the ports. They are not distance rates. * * * adherence to the distance principle is incidental, and always gives way when necessary to the maintenance of the differential relation between the ports.'"

XV.

Plaintiff-Intervenors allege that the said order of the Commission dated December 5, 1960, is based upon errors of law and is not supported by evidence or adequate findings, exceeds the statutory power of the Commission, and is unlawful, arbitrary, capricious, null and void, for the following reasons:

(1) The Commission's order does not rest upon evidentiary findings which are essential to support a conclusion that the proposed rates are unlawful under the Interstate Commerce Act.

(2) The order rests upon an unauthorized attempt by the Commission to control the volume and direct the flow of traffic moving to the several competing ports.

(3) The order denies to intervening railroads the right to meet the rates of competing railroads by an adjustment of rates within the zone of reasonableness and without undue or unreasonable preference or prejudice.

(4) If the vague language in respect of the compensativeness of the proposed rates at page 734 of the Commission's [fol. 5140] report is to be construed as a finding that the rates are not shown to be compensatory, the Commission has erred, in spite of the adequacy of the record, in arbitrarily imposing impossible tests upon plaintiff carriers.

(5) The Commission failed to recognize that, as a matter of managerial discretion, railroads may voluntarily equalize rates via competing gateways even though they might not be compelled to do so by law.

(6) The Commission arbitrarily and without authority has required intervening railroads to maintain on the involved import and export traffic between northern tier ports and Affected Territory differentially higher rates than those maintained by competing railroads via Philadelphia, Baltimore, and Hampton Roads for the purpose of continuing present traffic patterns, under which the vast majority of this rail traffic moves via Baltimore and the other southern tier ports.

(7) The order of the Commission requiring cancellation of the suspended schedules proposing equalization is invalid because there are no factual findings to support such order.

(8) The report and order requiring the cancellation of the suspended schedules proposing equalization are invalid because the Commission has exceeded the power delegated to it by Congress with respect to regulating rates.

(9) The Commission erred in narrowly applying Section 3(1) of the Interstate Commerce Act to the exclusion of the remaining provisions of that section.

(10) The Commission erred in failing and refusing to apply in its determination and disposition of this proceeding applicable and governing sections of the Interstate Commerce Act other than Section 3(1) thereof.

(11) If various statements in the Commission's reports are intended as findings that the proposed equalized rates [fol. 5141] are not just and reasonable or are not reasonably compensatory, such findings are not supported by subsidiary or basic findings and by substantial evidence on the record as a whole.

(12) If various statements in the Commission's reports are intended as findings that the proposed equalized rates are not consistent with the provisions of Section 15a(2) of the Interstate Commerce Act or with the National Transportation Policy, such findings are not supported by subsidiary or basic findings and by substantial evidence on the record as a whole.

(13) The Commission erred in considering the lawfulness of the proposed equalized rates solely as a port interest case under Section 3(1) when, in fact, this proceeding was an investigation under Section 15(7) of the Interstate Commerce Act involving the voluntary publication of schedules by railroads in the exercise of their managerial discretion to meet a competitive situation.

(14) The Commission erred in finding that the proposed equalized rates would result in undue preference and prejudice under Section 3(1) in the light of the facts of record as found by the Commission which show that the railroads serving the northern tier ports are now handling less than one-third of the involved traffic and that the total traffic through the northern tier ports has been declining and continues to decline.

(15) The Commission erred in ignoring adequate and cumulative evidence of the effect of the existing rate differentials on the movement of traffic and has arbitrarily and capriciously placed an impossible burden on plaintiff railroads to come forward with traffic data well known to be impossible of ascertainment.

(16) The Commission refused to rule on requested findings in violation of Section 8(b) of the Administrative Procedure Act.

[fol. 5142] (17) The Commission refused to give consideration to the exceptions to the Examiner's proposed report submitted by intervening railroads contrary to the provisions of Section 8(b) of the Administrative Procedure Act.

XVI.

Plaintiff-Intervenors will be irreparably damaged if said reports and order are not permanently suspended, enjoined, set aside and annulled, and are without an adequate remedy at law.

XVII.

Wherefore, plaintiff-intervenors pray:

1. That process may issue against the United States of America and the Interstate Commerce Commission.

2. That this Court stay, restrain, and suspend the operation of the order of the Commission dated December 5, 1960, pending the final hearing and determination of this action.

3. That a Court constituted as required by Title 28, U. S. Code, Section 2284 and 2321-2325, consisting of three judges, be convened and that said Court so constituted and convened shall hear this petition upon due and legal notice to defendants.

4. That the operation, enforcement and execution of said order be permanently enjoined and said order be permanently set aside, annulled and suspended.

5. That plaintiff-intervenors recover their proper costs.

6. That plaintiff-intervenors have such other and further [fol. 5143] relief in the premises as may be just and proper under the circumstances.

Richard J. Ferriter, 379 South Station, Boston 10, Mass., Attorney for Plaintiff-Intervenors.

Of Counsel

John F. Reilly, 750 Third Avenue, New York, N. Y., For The Delaware and Hudson Railroad Corporation;

Richard E. Costello, 140 Cedar Street, New York 6, N. Y., For Erie-Lackawanna Railroad Company;

J. W. G. MacDougall, 360 McGill Street, Montreal, Quebec, Canada, For Grand Trunk Railway System—Lines East (Canadian National Railway Company);

John H. Colgren, George J. Schwarz, 466 Lexington Avenue, New York 17, N. Y., For The New York Central Railroad Company;

James W. Grady, Thomas P. Hackett, 54 Meadow Street, New Haven, Conn., For The New York, New Haven and Hartford Railroad Company;

Raymond W. Troy, Lum, Biunno and Tompkins, 605 Broad Street, Newark, N. J., For New York, Susquehanna and Western Railroad Company.

Certificate of service (omitted in printing).

[fol. 5144] Appendix "A" to amended complaint—Commission's report, dated December 5, 1960 omitted. Printed side folio 5060, page 3821 supra.

[fol. 5145]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.

AMENDED COMPLAINT OF THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL., INTERVENING PLAINTIFFS—Filed July 12, 1961

I.

The Port of New Authority is a municipal corporate instrumentality of the States of New York and New Jersey, created by Compact between the two States with the consent of Congress (Pub. Res. No. 17, 67 Cong., S.J. Res. 88, dated August 23, 1921), and charged with the duty of promoting and protecting the commerce of the Port of New York, including the prevention of obstructions to the commerce of the port caused by disadvantages in transportation rates compared with rates applying to and from other ports. The Authority is authorized to participate in any proceeding affecting the commerce of the Port of New York. (Compact, Art. XIII, Chap. 154, Laws of New York 1921, see page 25, and Chap. 151, Laws of New Jersey, 1921, see page 27.) The principal offices of the Authority are located at 111 Eighth Avenue, New York 11, New York.

[fol. 5146]

II.

The State of New York is represented in this action by its Attorney General, Louis J. Lefkowitz, pursuant to the authority vested in him by New York State Executive Law,

Section 63, subdivision 1. Since the welfare of the citizens of the State depends in part upon the encouragement and expansion of foreign trade through the Port of New York, and since the present impairment of such trade resulting from the existing differential freight rates is detrimental to the interests of the People of the State of New York, he regards the property and financial concern of the State in this controversy as manifest beyond the reach of challenge. Also appearing in support of this position is the Department of Commerce of the State of New York which is empowered to encourage and develop commerce with other States and foreign countries and to cooperate with interstate commissions engaged in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce (New York State Commerce Law, Section 100, subdivisions 8 and 9).

III.

The City of New York, a municipal corporation, appears in this action by direction of its Mayor, Robert F. Wagner, to protect the interests and welfare of the City and its residents. The City, through its agencies, is empowered to "organize, promote, coordinate and carry out within or without the city, activities, projects and programs designed to encourage, stimulate and foster the well-being, development, growth and expansion of business, industry and commerce in the city, and the enhancement and protection of the economic life of the city." (New York City Charter, Sec. 1132).

[fol. 5147] IV.

The Chamber of Commerce of The State of New York; Brooklyn Chamber of Commerce, Inc.; Belleville Manufacturers' Association; Bergen County Chamber of Commerce; The Bronx Board of Trade; Chamber of Commerce, Garfield, New Jersey; Chamber of Commerce, Irvington, New Jersey; Chamber of Commerce of Eastern Union County; Clifton Chamber of Commerce; Commerce and Industry Association of New York, Inc.; Hoboken Chamber of Commerce; Ironbound Manufacturers' Association,

Inc.; The Maritime Association of The Port of New York; Newark Association of Commerce and Industry; New Jersey Industrial Traffic League; New York Board of Trade; The New York Shipping Association, Inc.; Queensborough Chamber of Commerce; The Shippers' Conference of Greater New York; The West New York Chamber of Commerce; and West Side Association of Commerce in the City of New York are trade associations and business, industrial and commercial organizations interested in developing, promoting, and protecting the commerce of the New Jersey-New York port district.

V.

This action is brought under, the United States is made a defendant under, and the jurisdiction of this Court is conferred by, United States Code, Title 28, Sections 1336, 1398, 2321-2325, inclusive.

VI.

The venue of this action is in this Court, pursuant to the provisions of U.S. Code, Title 28, Section 1398, referred to above, because the orders of the Commission sought to be suspended, enjoined, set aside, and cancelled relate to [fol. 5148] rates and charges for transportation of import and export traffic between the Ports of Boston and New York and Central Territory[1] to be charged by the railroad plaintiffs and intervenors in Court Action 61-38-S, including The New York, New Haven and Hartford Railroad Company, a consolidated railroad corporation organized

[1] Described by the Commission in its report (311 I.C.C. 691) as roughly that represented by central freight association territory, including Illinois freight association territory and southern Wisconsin. It includes territory on and west of a line extending from a point just west of Buffalo through Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof, certain points in Kentucky on the lines of the Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio.

and existing under the laws of the Commonwealth of Massachusetts, within the jurisdiction of this Court.

VII.

The Interstate Commerce Commission (hereinafter called the "Commission") is an administrative tribunal, created by the Act to Regulate Commerce, approved February 4, 1887, 24 Stat. 383, and amendments thereto, now known as the Interstate Commerce Act, with specifically vested powers and duties respecting interstate commerce under said Interstate Commerce Act and the various acts amendatory thereof and supplemental thereto.

VIII.

In the aforesaid proceedings before the Commission, in which the reports and order herein complained of were made, and which order plaintiffs herein seek to have en- [fol. 5149] joined, set aside, suspended and annulled, the Commission ordered the suspension and investigation of certain tariff schedules filed to become effective July 10, 1956, wherein certain rail carriers serving the ports of New York and Albany, N. Y., Boston, Mass., and Portland, Me. (hereinafter sometimes called the "Northern tier ports") proposed to reduce the rates on import and export freight (except coal, coke, and iron ore) between the Northern tier ports and Central territory so as to equalize such rates with those applying between Baltimore, Md., and Central territory. The proposed rate reductions were generally 3 cents per 100 pounds, except on flour and grain, as to which the reductions were 2 and 1½ cents per 100 pounds, respectively. Immediately thereafter, competing railroads serving the ports of Baltimore, Hampton Roads, Virginia, and Philadelphia, Pennsylvania (hereinafter sometimes called the "Southern tier ports") published tariff schedules seeking the restoration of the existing rate differentials favoring those ports. The Baltimore and Ohio Railroad Company and The Pennsylvania Railroad Company, which serve New York as well as Philadelphia and Baltimore, published equalizing rates to and from New York, as well as differential-restoring rates to and from the

Southern tier ports. These two railroads intervened as defendants herein. All of the schedules were ordered suspended by the Commission and made the subject of an investigation at the same time.

IX.

Hearings were held in connection with all of the tariff schedules and a proposed report was issued by a Commission hearing examiner. Exceptions to the examiner's proposed report were filed by plaintiffs herein, and oral argu- [fol. 5150] ment was held before the Commission on May 24, 1960. On January 3, 1961, the Commission (Commissioners Freas and McPherson concurring and Commissioner Webb dissenting) served its original report and the order herein complained of. (Investigation and Suspension Docket No. 6615, *Equalization of Rates at North Atlantic Ports,* reported at 311 I.C.C. 689.) The Commission's report and order, dated December 5, 1960, was attached as Appendix A to the original complaint filed herein by Boston and Maine Railroad and The New York, New Haven and Hartford Railroad Company and is adopted and incorporated herein by reference under Rule 10 (c) of the Rules of Civil Procedure. A copy of the printed report is attached hereto for ready reference. In said report and order, the Commission required that the rail carriers serving the Northern tier ports cancel said tariff schedules on or before January 23, 1961, upon not less than one day's notice to the Commission and to the general public by filing and posting in the manner prescribed under Section 6 of the Interstate Commerce Act.

Following the filing of the original complaint herein, the Commission on January 16, 1961, postponed indefinitely the cancellation date upon agreement of the plaintiff railroads to voluntarily keep the schedules in suspension until termination of the appeal. After a pre-trial conference at which brief and trial dates were set by the Court, the Commission on its own motion reopened the proceeding for reconsideration on April 11, 1961, three days before opening briefs were due. In its report on reconsideration, dated June 15, 1961, the Commission, (Commissioner Freas con-

curring, Commissioners Webb and Tucker dissenting, and [fol. 5151] Commissioner Bush not participating) "amplified" and affirmed its prior findings. A copy of the Commission's report on reconsideration is attached hereto.

X.

The Commission's reports show that:

(1) The tariff schedules described in Paragraph VIII hereof which have been ordered cancelled were proposed to equalize the rates on import and export traffic, as described in said schedules, moving via rail between Central territory and the Northern tier ports with the rates applicable on the same traffic between Central territory and Baltimore. These differentials were first established in 1877, when there were ocean rates to and from Baltimore higher than the ocean rates to and from New York and Boston. "The differentials were designed, and their effect was, to compensate for the differences in these ocean rates in favor of the northern tier ports. Thus, they tended to produce equal total transportation charges between an interior point and the foreign origin or destination over all routes through the several ports, affording the different railroads and ports competitive rates." (311 I.C.C. 693-694) In its original report, the Commission found that of the three principles mentioned by the parties as controlling these port relationships, that is, the distance principle, the cost principle, and the "competitive" principle, the last one was found to be the true one. (311 I.C.C. 695)

The Commission pointed out:

[fol. 5152] "Such distance disadvantage as they [the Northern tier ports] have are much less than the substantial differences in distances to and from some other ports which have a parity or near parity of rates, including the Canadian ports, and the wide differences which obtain where the several South Atlantic and Gulf ports are equalized.

"• • • It is apparent that considerable disregard of rail distances is characteristic of all port adjust-

ments as it was in the establishment of the rates here dealt with." (311 I.C.C. 715-716)

[In its report on reconsideration, however, the Commission apparently reverses itself and history by stating that "comparative rail distances between differential territory and Baltimore, Philadelphia, and New York were an important consideration in the compromise." (Sheet 5)]

(2) Beginning in the twenties and extending to about 1935, the ocean rates to and from the different ports were equalized. Consequently, the sum of the rail and ocean transportation charges through the Northern tier ports became higher than the sum of those charges through Baltimore by the amounts of the above differentials. The rate schedules here involved, if made effective, would abolish the differentials and would generally provide an equality of aggregate transportation charges, rail and ocean, between foreign countries and points in Central territory for the whole range of North Atlantic ports, including Albany. (311 I.C.C. 694) Rate equalization exists between South Atlantic and Gulf ports and interior competitive territory. (311 I.C.C. 697)

(3) The percentage of total United States cargo moving through the New York Customs District, both [fol. 5153] import and export, has declined from 26.5 per cent in 1935 to 14 per cent in 1956, the last year for which figures are included in this record. (311 I.C.C. 703) The railroads serving the Northern tier ports in the year ended July 31, 1956, handled 36.3 per cent of the exports to and from the territory covered by the schedules and only 24. 2 per cent of the imports, while 63.7 per cent of such exports and 75.8 per cent of such imports were handled by the railroads serving the Southern tier ports. (Appendix F, 311 I.C.C. 751)

(4) The Commission in its original report concluded that "the present differentials have long served to retain a reasonable competitive relationship between

the principal port groups and should be maintained." (311 I.C.C. 741) In its ultimate findings, the Commission found that the proposed equalized rates "are not shown to be reasonably related to the present rates" and that the proposed equalized rates "would result in undue preference of and advantage to the northern tier ports as a group and in undue prejudice and disadvantage to the southern tier ports." (311 I.C.C. 741-742) In its report on reconsideration, the Commission makes substantially the same findings, except that they are made to apply to the Northern tier ports "separately and collectively." (Sheets 21-22)

XI.

Plaintiffs allege that the said order of the Commission dated December 5, 1960, is based upon errors of law and is not supported by evidence or adequate findings, exceeds the statutory power of the Commission, and is unlawful, arbitrary, capricious, null and void, for the following reasons:

[fol. 5154] (1) The Commission's order does not rest upon evidentiary findings which are essential to support a conclusion that the proposed rates are unlawful under the Interstate Commerce Act.

(2) The Commission's order requiring cancellation of the suspended schedules proposing equalization is invalid because there are no factual findings to support such order.

(3) The order requiring the cancellation of the suspended schedules proposing equalization is invalid because the Commission has exceeded the power delegated to it by Congress with respect to regulating rates.

(4) The order rests upon an unauthorized attempt by the Commission to control the volume and direct the flow of traffic moving through the several competing ports.

(5) The Commission arbitrarily and without authority has required the plaintiff railroads and intervening plaintiff and defendant railroads to maintain on the involved import and export traffic between Northern tier ports and

Central territory differentially higher rates than those maintained by the same railroads (in the case of the Pennsylvania and the Baltimore and Ohio) or competing railroads via Baltimore for the purpose of continuing present traffic patterns, under which the vast majority of rail traffic to and from Central territory moves via Baltimore and the other Southern tier ports.

(6) The Commission erred in basing its traffic comparisons on total port tonnages rather than on the traffic moving by rail between the various ports and Central territory.

(7) The Commission erred in considering the lawfulness of the proposed equalized rates as though this proceeding involved a complaint under Section 3 (1) rather than as a voluntary publication of the schedules by the intervening [fol. 5155] railroads in the exercise of their managerial discretion for the purpose of giving them a fair opportunity to compete.

(8) The Commission failed to recognize that, as a matter of managerial discretion, railroads may voluntarily equalize rates via competing ports or gateways even though they might not be compelled to do so by law.

(9) The order denies to the plaintiff and intervening railroads the right to meet the rates of competing railroads by an adjustment of rates within the zone of reasonableness and without undue or unreasonable preference or prejudice.

(10) The Commission erred in finding that the proposed equalized rates would result in undue preference and prejudice under Section 3 (1) in the light of the facts of record as found by the Commission which show that the railroads serving the Northern tier ports are now handling less than one-third of the involved traffic and that the traffic through the Northern tier ports has been declining and continues to decline.

(11) If various statements in the Commission's reports are intended as findings that the proposed equalized rates are not just and reasonable or are not reasonably compensatory, such findings are not supported by subsidiary

or basic findings based on substantial evidence on the record as a whole.

(12) If various statements in the Commission's reports are intended as findings that the proposed equalized rates would be in violation of Section 15a (2) or would be contrary to the national transportation policy, such findings are not supported by subsidiary or basic findings based on substantial evidence on the record as a whole.

(13) The Commission refused to rule specifically on requested findings in violation of Section 8 (b) of the Administrative Procedure Act.

[fol. 5156] (14) The Commission refused to consider and rule upon the exceptions to the Examiner's proposed report submitted by railroads serving New York and supporting port interests, contrary to the provisions of Section 8 (b) of the Administrative Procedure Act.

XII.

The intervening plaintiffs will be irreparably damaged if said reports and order are not permanently suspended, enjoined, set aside and annulled, and are without an adequate remedy at law.

XIII.

Wherefore, the intervening plaintiffs pray:

(1) That process may issue against the United States of America and Interstate Commerce Commission;

(2) That this Court stay, restrain and suspend the operation of the order of the Commission dated December 5, 1960, pending the final hearing and determination of this action;

(3) That a Court constituted as required by U.S. Code, Title 28, Sections 2284, and 2321-2325, consisting of three Judges, of whom at least one shall be a Circuit Judge, be convened, and that said Court so constituted and convened shall hear this petition upon due and legal notice to defendants;

(4) That said Court, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside and annulling the said orders of the Commission;

[fol. 5157] (5) That the intervening plaintiffs have such other and further relief as to the Court may deem required by equity and as may be deemed by this Court fit and proper.

Respectfully submitted,

Walter J. Myskowski, Investment Building, Washington, D. C., Counsel for Intervening Plaintiffs.

Of Counsel

Louis J. Lefkowitz, Attorney General, Paxton Blair, Solicitor General, Dunton F. Tynan, Assistant Solicitor General, J. Bruce MacDonald, Counsel, The Capitol, Albany 1, New York, For The State of New York;

Leo A. Larkin, Corporation Counsel, Samuel Mandell, Sidney Brandes, Assistant Corporation Counsel, Municipal Building, New York, New York, For The City of New York;

Charles W. Merritt, 25 Broadway, New York, New York, For The Chamber of Commerce of The State of New York;

Sidney Goldstein, General Counsel, F. A. Mulhern, Attorney, 111 Eighth Avenue, New York 11, New York, Arthur L. Winn, Jr., Samuel H. Moerman, James M. Henderson, Laroe, Winn & Moerman, Investment Building, Washington 5, D. C., For The Port of New York Authority, et al.

[fol. 5158] Certificate of service (omitted in printing).

[fol. 5159]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF MARYLAND PORT AUTHORITY AND BALTIMORE ASSOCIATION OF COMMERCE, INTERVENING DEFENDANTS, TO THE AMENDED COMPLAINT OF BOSTON AND MAINE RAILROAD AND THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR—Filed July 20, 1961

Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, answering the amended complaint of Boston and Maine Railroad and The New York, New Haven and Hartford Railroad Company, Debtor:

I.

Admit the material allegations contained in paragraphs I through V inclusive.

II.

Admit the material allegations contained in paragraph VI except that they deny that the present rates from Albany to affected territory are differentially higher than the rates from Philadelphia to affected territory. They also deny that the present rates from Boston are differentially higher than the rates from Hampton Roads to all destinations in affected territory.

[fol. 5160] In further answer to this paragraph intervening defendants aver that the rates applicable on import-export traffic between New York and affected territory are the same as the rates applicable between Boston and that territory, and that the export rates to Portland, Maine, from affected territory are also the same as the rates to Boston.

III.

Deny the material allegations contained in paragraph VII, except that they admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admit the material allegations contained in paragraph VIII.

V.

The allegations contained in paragraph IX are a series of selected statements characterized as finding of the Commission made in its report of December 5, 1960, and include interpretation of the statements by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report and order dated December 5, 1960, and of the report on reconsideration dated June 15, 1961, for a complete statement of the findings upon which the decision is based.

VI.

Deny the material allegations contained in paragraph X.

[fol. 5161]

VII.

Admit the material allegations contained in paragraphs XI to XIII, inclusive.

VIII.

The allegations contained in paragraph XIV are selected statements taken from the report of the Commission on reconsideration dated June 15, 1961, interpreted by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the reports of the Commission dated December 5, 1960 and June 15, 1961, for a complete statement of the findings and conclusions upon which the decision is based.

IX.

Deny the material allegations contained in paragraph XV except that they admit the quoted portion was taken from the Commission's original report.

X.

Deny the material allegations contained in paragraphs XVI to XVIII, inclusive.

XI.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

XII.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960, with respect to the Boston rates, and/or the New York, [fol. 5162] Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered canceled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the complaint be dismissed, plaintiffs to pay the costs.

Respectfully submitted,

William L. Marbury, 900 First National Bank Building, Baltimore 2, Maryland;

Donald Macleay, 1625 K Street, N. W., Washington 6, D. C.

Attorneys for Maryland Port Authority.

J. Cookman Boyd, Jr., Meyerhoff Building, Baltimore 1, Maryland;

Karl J. Grimm, 22 Light Street, Baltimore 2, Maryland;

Attorneys for Baltimore Association of Commerce.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 20, 1961.

[fol. 5163] Certificate of Service (omitted in printing).

[fol. 5164]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF MARYLAND PORT AUTHORITY AND BALTIMORE ASSOCIATION OF COMMERCE, INTERVENING DEFENDANTS, TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFF, MASSACHUSETTS PORT AUTHORITY—Filed July 20, 1961

Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, answering the amended complaint of intervening plaintiff, Massachusetts Port Authority:

I.

Admit the material allegations contained in paragraphs I through IV, inclusive.

II.

Deny the material allegations contained in paragraph V, except that they admit the material allegations contained in the first subparagraph thereof, and admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

[fol. 5165]

III.

Admit the material allegations contained in the last sentence of paragraph VI referring to the tariff publications

at issue. The balance of paragraph VI requires no answer because it alleges the motive for the publication of the rates between Boston and each of the major North Atlantic ports from New York north, on the one hand, and affected territory, on the other hand, which rates the Commission has disapproved.

IV.

Admit the material allegations contained in paragraphs VII and VIII.

V.

Paragraph IX is a series of selected statements characterized by intervening plaintiff as findings of the Commission in its report and order of December 5, 1960, and includes interpretation by intervening plaintiff. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the original report and order dated December 5, 1960, and to the report on reconsideration dated June 15, 1961, for a complete statement of the findings underlying and supporting the decision.

VI.

Deny all material allegations contained in paragraph X, except that they admit the Commission ordered the cancelation of the proposed parity rates.

VII.

Admit the material allegations contained in paragraphs XI and XII.

[fol. 5166]

VIII.

Deny all material allegations contained in paragraph XIII, except that they admit the Commission handed down its report on reconsideration under date of June 15, 1961, in which among other things two corrections were made in Appendix E to the original report, and further admit the quoted portions of the paragraph were taken from the reports of the Commission.

IX.

Deny the material allegations contained in paragraphs XIV to XVI, inclusive.

X.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

XI.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960, with respect to the Boston rates and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia, and Hampton Roads not justified and ordered canceled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia, and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of intervening plaintiff be dismissed, intervening plaintiff to pay the costs.

[fol. 5167]

Respectfully submitted,

William L. Marbury, 900 First National Bank Building, Baltimore 2, Maryland;

Donald Macleay, 1625 K Street, N. W., Washington 6, D. C.

Attorneys for Maryland Port Authority.

J. Cookman Boyd, Jr., Meyerhoff Building, Baltimore 1, Maryland;

Karl J. Grimm, 22 Light Street, Baltimore 2, Maryland;

Attorneys for Baltimore Association of Commerce.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 20, 1961.

[fol. 5168] Certificate of Service (omitted in printing).

[fol. 5169]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF MARYLAND PORT AUTHORITY AND BALTIMORE ASSOCIATION OF COMMERCE, INTERVENING DEFENDANTS, TO THE AMENDED COMPLAINT OF THE SEVERAL RAILROAD INTERVENING PLAINTIFFS—Filed July 20, 1961

Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, answering the complaint of the several railroad intervening plaintiffs [Delaware and Hudson Railroad Corporation, Erie-Lackawanna Railroad Company, Grand Trunk Railway System—Lines East (Canadian National Railway Company), New York Central Railroad Company, New York, New Haven and Hartford Railroad Company, and New York, Susquehanna and Western Railroad Company]:

I.

Admit the material allegations contained in paragraphs I through X, inclusive.

II.

Admit the material allegations contained in paragraph XI except aver that the rates published by the railroads [fol. 5170] serving Baltimore, Philadelphia and Hampton Roads were published to become effective simultaneously with the rates published by the railroads serving New York, Albany, Boston and Portland.

III.

Deny the material allegations contained in paragraph XII, except that they admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admit the material allegations contained in paragraph. XIII.

In further answer, intervening defendants aver that the Commission has postponed its order requiring the cancelation of the tariffs found not justified until further order of the Commission because of the pendency of the instant proceeding.

V.

Admit the material allegations contained in subparagraph (1) of paragraph XIV except that the order requiring cancelation of the tariffs found not justified has been postponed until further order of the Commission. The remainder of paragraph XIV consists of selected statements paraphrased from the Commission's reports, interspersed with direct quotations, and includes interpretation of the statements by intervening plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report dated December 5, 1960, and of the report on reconsideration dated June 15, 1961, for a complete statement of the basis for the decision by the Commission.

[fol. 5171]

VI.

Deny the material allegations contained in paragraphs XV and XVI.

VII.

Deny each and all of the allegations contained in the complaint of these intervening plaintiffs except as herein expressly admitted.

VIII.

In further answer to the complaint of these intervening plaintiffs, intervening defendants aver that if the Court should enjoin, set aside and annul the order of the Commission dated December 5, 1960, with respect to the New York rates and/or the rates to and from Boston, Albany and Portland, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered canceled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of these intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

William L. Marbury, 900 First National Bank Building, Baltimore 2, Maryland;

Donald Macleay, 1625 K Street, N. W., Washington 6, D. C.;

Attorneys for Maryland Port Authority.

[fol. 5172] J. Cookman Boyd, Jr., Meyerhoff Building, Baltimore 1, Maryland;

Karl J. Grimm, 22 Light Street, Baltimore 2, Maryland;

Attorneys for Baltimore Association of Commerce.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 20, 1961.

[fol. 5173] Certificate of Service (omitted in printing).

[fol. 5174]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF MARYLAND PORT AUTHORITY AND BALTIMORE ASSOCIATION OF COMMERCE, INTERVENING DEFENDANTS, TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFFS, THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL.—Filed July 20, 1961

Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, answering the amended complaint of intervening plaintiffs, The Port of New York Authority, The State of New York, The City of New York, et al.:

I.

Admit the allegations in paragraph I.

II.

Deny the allegations in paragraph II that the existing port differential freight rate adjustment has impaired or is impairing foreign trade through the port of New York and that said port differential rates are detrimental to the [fol. 5175] interests of the People of the State of New York. Admit all other material allegations in paragraph II.

III.

Admit the material allegations contained in paragraphs III through IX, inclusive.

IV.

Paragraph X is an incomplete paraphrasing of certain statements in the Commission's original report dated December 5, 1960, and the report on reconsideration dated June 15, 1961, interpreted by intervening plaintiffs. As such, the allegations contained in paragraph IX are argumentative and require no answer. The Court is respectfully referred to the entire text of the aforementioned reports of the Commission for the complete analysis and basis for decision.

V.

Deny the material allegations contained in paragraphs XI and XII.

VI.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

VII.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960,

with respect to the New York rates and/or the Boston, Albany and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and [fol. 5176] Hampton Roads not justified and ordered canceled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

William L. Marbury, 900 First National Bank Building, Baltimore 2, Maryland;

Donald Macleay, 1625 K Street, N. W., Washington 6, D. C.;

Attorneys for Maryland Port Authority.

J. Cookman Boyd, Jr., Meyerhoff Building, Baltimore 1, Maryland;

Karl J. Grimm, 22 Light Street, Baltimore 2, Maryland;

Attorneys for Baltimore Association of Commerce.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 20, 1961.

[fol. 5177] Certificate of service (omitted in printing).

[fol. 5178]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF MAINE CENTRAL RAILROAD COMPANY, INTERVENING DEFENDANT TO AMENDED COMPLAINT—Filed July 24, 1961

The Maine Central Railroad Company, intervening defendant, answering the amended complaint:

I.

Admits the material allegations contained in Paragraphs I through V.

II.

Admits the material allegations contained in Paragraph VI, except that it denies that the present rates from Boston are differentially higher than the rates from Hampton Roads to all destinations in Affected Territory and that the present rates between Albany and Affected Territory are higher than those between Affected Territory and Philadelphia.

In further answer, intervening defendant avers that the rates applicable on import-export traffic between New York and Affected Territory are the same as the rates applicable between Boston and that territory; that the export rates to Portland, Maine from Affected Territory are also the same as the rates to Boston, and that the rates between [fol. 5179] Albany and Affected Territory are the same as the rates between Philadelphia and that territory.

III.

Denies the material allegations contained in Paragraph VII, except that it admits that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admits the material allegations contained in Paragraph VIII.

In further answer to this paragraph, intervening defendant avers that the effective date of the Commission's order requiring the cancellation of the tariffs found not justified has been postponed until further order of the Commission as a result of the pendency of the instant proceeding.

V.

The allegations contained in Paragraph IX are a series of selected statements characterized as findings of the Commission made in its report of December 5, 1960 and include interpretation of the statements by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report and order dated December 5, 1960 and of the report on reconsideration dated June 15, 1961 for a complete statement of the findings upon which the decision is based.

VI.

Denies the material allegations contained in Paragraph X.

VII.

Admits the material allegations contained in Paragraphs XI to XIII, inclusive.

VIII.

The allegations contained in Paragraph XIV are selected statements taken from the report of the Commission on

reconsideration dated June 15, 1961 interpreted by plain-
[fol. 5180] tiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the reports of the Commission dated December 5, 1960 and June 15, 1961 for a complete statement of the findings and conclusions upon which the decision is based.

IX.

Denies the material allegations contained in Paragraph XV, except that it admits the quoted portion was taken from the Commission's original report dated December 5, 1960.

X.

Denies the material allegations contained in Paragraphs XVI to XVIII, inclusive.

XI.

Denies each and all of the allegations contained in the complaint except as herein expressly admitted.

XII.

In further answer to the complaint, intervening defendant avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the Boston rates, and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendant prays that the complaint be dismissed, plaintiffs to pay the costs.

Respectfully submitted,

Archibald M. Knowles, Scott W. Scully, 232 St. John Street, Portland, Maine, Counsel for Intervening Defendant.

Dated: July 21, 1961.

[fol. 5181] Certificate of service (omitted in printing).

[fol. 5182]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF MAINE CENTRAL RAILROAD COMPANY INTERVENING DEFENDANT TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFF, MASSACHUSETTS PORT AUTHORITY—Filed July 24, 1961

Maine Central Railroad Company, intervening defendant, answering the amended complaint of intervening plaintiff, Massachusetts Port Authority:

I.

Admits the material allegations contained in Paragraphs I through IV, inclusive.

II.

Denies the material allegations contained in Paragraph V, except that it admits the material allegations contained in the first subparagraph thereof, and admits that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

III.

Admits the material allegations contained in the last sentence of Paragraph VI referring to the tariff publications at issue. The balance of Paragraph VI requires no [fol. 5183] answer because it alleges the motive for the publication of the rates between Boston and each of the major North Atlantic ports from New York north, on the one hand, and Affected Territory, on the other hand, which rates the Commission has disapproved.

IV.

Admits the material allegations contained in Paragraphs VII and VIII.

V.

Paragraph IX is a series of selected statements characterized by intervening plaintiff as findings of the Commission in its report and order of December 5, 1960 and includes interpretation by intervening plaintiff. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the original report and order dated December 5, 1960 and to the report on reconsideration dated June 15, 1961 for a complete statement of the findings underlying and supporting the decision.

VI.

Denies all material allegations contained in Paragraph X, except that it admits the Commission ordered the cancellation of the proposed parity rates.

VII.

Admits the material allegations contained in Paragraphs XI and XII.

VIII.

Denies all material allegations contained in Paragraph XIII, except that it admits the Commission handed down its report on reconsideration under date of June 15, 1961, in which among other things two corrections were made in Appendix E to the original report, and further admits the quoted portions of the paragraph were taken from the sources cited.

[fol. 5184]

IX.

Denies the material allegations contained in Paragraphs XIV to XVI, inclusive.

X.

Denies each and all of the allegations contained in the complaint except as herein expressly admitted.

XI.

In further answer to the complaint, intervening defendant avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the Boston rates and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia, and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia, and Hampton Roads.

Wherefore, intervening defendant prays that the complaint of intervening plaintiff be dismissed, intervening plaintiff to pay the costs.

Respectfully submitted,

Archibald M. Knowles, Scott W. Scully, 232 St. John Street, Portland, Maine, Counsel for Intervening Defendant.

Dated: July 21, 1961.

[fol. 5185] Certificate of service (omitted in printing).

[fol. 5186]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF MAINE CENTRAL RAILROAD COMPANY, INTERVENING DEFENDANT TO THE AMENDED COMPLAINT OF THE SEVERAL RAILROAD INTERVENING PLAINTIFFS—Filed July 24, 1961

The Maine Central Railroad Company, intervening defendant, answering the complaint of the several railroad intervening plaintiffs (Delaware and Hudson Railroad Corporation, Erie-Lackawanna Railroad Company, Grand Trunk Railway System—Lines East (Canadian National Railway Company), New York Central Railroad Company, New York, New Haven and Hartford Railroad Company, and New York, Susquehanna and Western Railroad Company):

I.

Admits the material allegations contained in Paragraphs I through X, inclusive.

II.

Admits the material allegations contained in Paragraph XI except avers that the rates published by the railroads serving Baltimore, Philadelphia and Hampton Roads were published to become effective simultaneously with the rates [fol. 5187] published by the railroads serving New York, Albany, Boston and Portland.

III.

Denies the material allegations contained in Paragraph XII, except that it admits that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admits the material allegations contained in Paragraph XIII.

In further answer, intervening defendant avers that the Commission has postponed its order requiring the cancellation of the tariffs found not justified until further order of the Commission because of the pendency of the instant proceeding.

V.

Admits the material allegations contained in subparagraph (1) of Paragraph XIV except that the order requiring cancellation of the tariffs found not justified has been postponed until further order of the Commission. The remainder of Paragraph XIV consists of selected statements paraphrased from the Commission's reports, interspersed with direct quotations, and includes interpretation of the statements by intervening plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the

original report dated December 5, 1960 and of the report on reconsideration dated June 15, 1961 for a complete statement of the basis for the decision by the Commission.

VI.

Denies the material allegations contained in Paragraphs XV and XVI.

VII.

Denies each and all of the allegations contained in the complaint of these intervening plaintiffs except as herein expressly admitted.

[fol. 5188]

VIII.

In further answer to the complaint of these intervening plaintiffs, intervening defendant avers that if the Court should enjoin, set aside and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the rates to and from Boston, Albany and Portland, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendant prays that the complaint of these intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

Archibald M. Knowles, Scott W. Scully, 232 St. John Street, Portland, Maine, Counsel for Intervening Defendant.

Dated: July 21, 1961.

[fol. 5189] Certificate of service (omitted in printing).

[fol. 5190]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF RAILROAD INTERVENING DEFENDANT TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFFS, THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL.—Filed July 24, 1961

The Maine Central Railroad Company, intervening defendant, answering the amended complaint of intervening plaintiffs, The Port of New York Authority, The State of New York, The City of New York, et al.:

I

Denies the allegation in Paragraph I that the commerce of the port of New York is obstructed or disadvantaged by rail transportation rates compared with rates applying to and from other ports. Admits all other material allegations contained in Paragraph I.

II.

Denies the allegations in Paragraph II that the existing port differential freight rate adjustment has impaired or is impairing foreign trade through the port of New York and that said port differential rates are detrimental to the [fol. 5191] interests of the People of the State of New York. Admits all other material allegations in Paragraph II.

III.

Admits the material allegations contained in Paragraphs III through IX, inclusive.

IV.

Paragraph X is an incomplete paraphrasing of certain statements in the Commission's original report dated December 5, 1960 and the report on reconsideration dated June 15, 1961 interpreted by intervening plaintiffs. As such, the allegations contained in Paragraph IX are argumentative and require no answer. The Court is respectfully referred to the entire text of the aforementioned reports of the Commission for the complete analysis and basis for decision.

V.

Denies the material allegations contained in Paragraphs XI and XII.

VI.

Denies each and all of the allegations contained in the complaint except as herein expressly admitted.

VII.

In further answer to the complaint, intervening defendant avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the Boston, Albany and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendant prays that the com-
[fol. 5192] plaint of intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

Archibald M. Knowles, Scott W. Scully, 232 St. John Street, Portland, Maine, Counsel for Intervening Defendant.

Dated: July 21, 1961.

[fol. 5193] Certificate of service (omitted in printing).

[fol. 5194]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON & MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO THE AMENDED COMPLAINT OF THE PLAINTIFFS—Filed July 24, 1961

Comes now the Interstate Commerce Commission, hereinafter called the Commission, defendant, and for answer to plaintiffs' amended complaint:

I.

Admits the allegations contained in paragraphs I to V, inclusive, of the amended complaint.

II.

Admits the allegations contained in paragraph VI of the amended complaint, except denies that the present rates from Boston are differentially higher than the rates from Hampton Roads to all destinations in Affected Territory. Aver that the rates applicable on import-export traffic between New York and Affected Territory and between Boston and that territory are the same; and that the export [fol. 5195] rates to Portland, Maine from Affected Territory are the same as the like rates to Boston.

III.

Denies the allegations contained in paragraph VII of the amended complaint, except admits that there has been a gradual equalization of ocean rates to and from the ports involved beginning prior to 1935.

IV.

Admits the allegations contained in paragraph VIII of the amended complaint, but avers that the Commission, Chairman Hutchinson, on January 16, 1961, entered an order postponing until further order of the Commission the compliance date upon which the rates involved are required to be cancelled.

V.

Answering the allegation contained in paragraph IX of the amended complaint, respectfully refers the Court to the Commission's report of December 5, 1960 and of its report on reconsideration of June 15, 1961, for a complete and accurate analysis of the facts and statement of the findings made by the Commission in arriving at its ultimate conclusion and decision. The paraphrased statements from those reports and the conclusions and interpretations drawn [fol. 5196] therefrom, contained in the paragraph, are argumentative and do not require a specific answer.

VI.

Denies the allegations contained in paragraph X of the amended complaint, except admits that the quotation in said paragraph is contained in the Commission's report of December 5, 1960, but respectfully refers the Court to said report for the complete and accurate findings of the Commission.

VII.

Admit the allegations contained in paragraphs XI to XIII, inclusive, of the amended complaint.

VIII.

Denies the allegations contained in paragraphs XIV and XV of the amended complaint, except that with respect to the quotations contained in said paragraph, respectfully refers the Court to the Commission's report of December 5, 1960, and report on reconsideration of June 15, 1961, for the complete and accurate analysis of the facts and the statement of findings made by the Commission in arriving at its ultimate conclusion and decision.

IX.

Denies the allegation contained in paragraphs XVI to XVIII, inclusive, of the amended complaint, and in the subparagraphs of paragraph XVII, of the amended complaint.

[fol. 5197]

X.

For further answer to the allegations of the complaint, denies that the order of the Commission challenged in this action is unlawful for the reasons specified in the complaint or for any other reason whatsoever; and avers that the order under attack is valid in all respects. Except as expressly admitted herein, each and every allegation of the complaint is denied.

Wherefore, the Commission prays that the relief prayed for be denied, and that the complaints be dismissed.

Robert W. Ginnane, General Counsel; I. K. Hay, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 5198]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON & MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO THE AMENDED COMPLAINT OF THE MASSACHUSETTS PORT AUTHORITY, INTERVENING PLAINTIFF—Filed July 24, 1961

Comes now the Interstate Commerce Commission, hereinafter called the Commission, defendant, and for answer to the amended complaint of the Massachusetts Port Authority, intervening plaintiff:

I.

Admits the allegations contained in paragraphs I to IV, inclusive, of the amended complaint.

II.

Denies the allegations contained in paragraph V of the amended complaint, except admits the allegations contained in the first subparagraph and the first sentence of the third subparagraph of said paragraph.

III.

Admits the allegations contained in the last sentence of paragraph VI of the amended complaint. The remaining allegations of this paragraph, which have reference to the [fol. 5199] reasons which moved the publication of reduced rates, are argumentative and require no answer.

IV.

Admits the allegations contained in paragraphs VII and VIII of the amended complaint.

V.

Answering the allegations contained in paragraph IX of the amended complaint, respectfully refers the Court to the Commission's report and order of December 5, 1960 and the report on reconsideration of June 15, 1961 for the complete and accurate statement of facts and the findings made by the Commission in arriving at its ultimate conclusion and decision. The excerpted and paraphrased statements in paragraph IX of the amended complaint, characterized as findings, and conclusions of the Commission, are argumentative and constitute merely interpretations thereof, and require no answer.

VI.

Denies the allegations contained in paragraph X of the amended complaint, except admits that the Commission ordered cancelled the rates involved here, and also admits that the quotation in this paragraph is contained in the Commission's report of December 5, 1960, but respectfully refers the court to said report for the complete and accurate findings of the Commission.

VII.

Admits the allegations contained in paragraphs XI and XII of the amended complaint.

VIII.

Denies the allegations contained in paragraph XIII of the amended complaint, except admits that the Commission [fol. 5200] made two minor corrections in Appendix B of its report of December 5, 1960, and also admits the quoted portions of the paragraph are contained in the Commission's report on reconsideration of June 15, 1961, but respectfully refers the Court to the latter report for its complete and accurate contents.

IX.

For further answer to the allegations of the amended complaint, denies that the order of the Commission challenged in this action is unlawful for the reasons specified in the complaint or for any other reason whatsoever; and avers that the order under attack is valid in all respects. Except as expressly admitted herein, each and every allegation contained in the complaint is denied.

Wherefore, the Commission prays that the relief prayed for be denied, and that the complaints be dismissed.

Robert W. Ginnane, General Counsel; I. K. Hay, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 5201]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON & MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO THE AMENDED COMPLAINT OF INTERVENING RAILROAD PLAINTIFFS—Filed July 24, 1961

Comes now the Interstate Commerce Commission, hereinafter called the Commission, defendant, and for answer to the amended complaint of The Delaware and Hudson Railroad Corporation and other intervening railroad plaintiffs:

I.

Admits the allegations contained in paragraphs I to X, inclusive, of the amended complaint.

II.

Admits the allegations contained in paragraph XI of the amended complaint, except avers that the rates published by the railroads serving the southern tier ports were published to become effective simultaneously with the rates published by the railroads serving the northern tier ports.

III.

Denies the allegations contained in paragraph XII of the amended complaint, except admits that the ocean rates

to and from the ports involved were gradually equalized prior to 1935.

[fol. 5202]

IV.

Admits the allegations contained in paragraph XIII of the amended complaint, but avers that the Commission, Chairman Hutchinson, by order dated January 16, 1961, postponed until further order of the Commission the compliance date upon which the rates involved were required to be cancelled.

V.

Answering the allegations contained in paragraph XIV of the amended complaint, respectfully refers the Court to the Commission's report of December 5, 1960, and report on reconsideration of June 15, 1961, for the complete and accurate statement of facts and the findings made by the Commission in arriving at its ultimate conclusion and decision. The excerpted and paraphrased statements from those reports, set forth in paragraph XIV of the amended complaint, are argumentative and require no specific answer.

VI.

Denies the allegations contained in paragraphs XV and XVI of the amended complaint.

VII.

For further answer to the allegations of the complaint, denies that the order of the Commission challenged in this action is unlawful for the reasons specified in the complaint or for any other reason whatsoever; and aver that the order under attack is valid in all respects. Except as expressly admitted herein, each and every allegation of the complaint is denied.

[fol. 5203] Wherefore, the Commission prays that the relief prayed for be denied, and that the complaint be dismissed.

Robert W. Ginnane, General Counsel; I. K. Hay, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 5204]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON & MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO THE AMENDED COMPLAINT OF THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL., INTERVENING PLAINTIFFS—Filed July 24, 1961

Comes now the Interstate Commerce Commission, hereinafter called the Commission, defendant, and for answer to the amended complaint of The Port of New York Authority, The State of New York, The City of New York, et al., intervening plaintiffs:

I.

Admits the allegations contained in paragraph I and II of the amended complaint, except denies the existence of any obstructions, disadvantages or impairments to trade or commerce at the port of New York or to the interests of the people of New York because of the present rate differentials involved in this action.

[fol. 5205]

II.

Admits the allegations contained in paragraphs III to IX, inclusive, of the amended complaint.

III.

Answering the allegations contained in paragraph X of the amended complaint, respectfully refers the Court to the Commission's report of December 5, 1960, and the report upon reconsideration of June 15, 1961, for a complete and accurate analysis of the facts and statement of the findings of the Commission in arriving at its ultimate conclusion and decision. The excerpted and paraphrased statements from those reports, and the conclusions and interpretations drawn therefrom, contained in the paragraph, are argumentative and do not require a specific answer.

IV.

Denies the allegations contained in paragraphs XI and XII of the amended complaint, and in the subparagraphs of paragraph XI of said complaint.

V.

For further answer to the allegations of the amended complaint, denies that the orders of the Commission challenged in this action are unlawful for the reasons specified in the complaints or for any other reason whatsoever; and [fol. 5206] avers that the orders under attack are valid in all respects. Except as expressly admitted herein, each and every allegation of the complaint is denied.

Wherefore, the Commission prays that the relief prayed for be denied, and that the complaints be dismissed.

Robert W. Ginnane, General Counsel; I. K. Hay, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 5207]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF RAILROAD INTERVENING DEFENDANTS TO AMENDED COMPLAINT—Filed July 24, 1961

The Baltimore and Ohio Railroad Company, Canton Railroad Company, The Chesapeake and Ohio Railway Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, Reading Company, and Western Maryland Railway Company, intervening defendants, answering the amended complaint:

I.

Admit the material allegations contained in Paragraphs I through V.

II.

Admit the material allegations contained in Paragraph VI, except that they deny that the present rates to and [fol. 5208] from Boston are differentially higher than the rates to and from Hampton Roads and all destinations in Affected Territory, and further deny that the rates to and from Albany are higher than the rates to and from Philadelphia and Affected Territory.

In further answer, intervening defendants aver that the rates applicable on import-export traffic between New York and Affected Territory are the same as the rates applicable

between Boston and that territory, that the export rates to Portland, Maine from Affected Territory are also the same as the rates to Boston, and that the rates between Albany and Affected Territory are the same as the rates between Philadelphia and the same territory.

III.

Deny the material allegations contained in Paragraph VII, except that they admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admit the material allegations contained in Paragraph VIII.

In further answer to this paragraph, intervening defendants aver that the effective date of the Commission's order requiring the cancellation of the tariffs found not justified has been postponed until further order of the Commission as a result of the pendency of the instant proceeding.

V.

The allegations contained in Paragraph IX are a series [fol. 5209] of selected statements characterized as findings of the Commission made in its report of December 5, 1960 and include interpretation of the statements by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report and order dated December 5, 1960 and of the report on reconsideration dated June 15, 1961 for a complete statement of the findings upon which the decision is based.

VI.

Deny the material allegations contained in Paragraph X.

VII.

Admit the material allegations contained in Paragraphs XI to XIII, inclusive.

VIII.

The allegations contained in Paragraph XIV are selected statements taken from the report of the Commission on reconsideration dated June 15, 1961 interpreted by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the reports of the Commission dated December 5, 1960 and June 15, 1961 for a complete statement of the findings and conclusions upon which the decision is based.

IX.

Deny the material allegations contained in Paragraph XV, except that they admit the quoted portion was taken [fol. 5210] from the Commission's original report dated December 5, 1960.

X.

Deny the material allegations contained in Paragraphs XVI to XVIII, inclusive.

XI.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

XII.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the Boston rates, and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates to and from the first named ports would require approval of the reduced rates to and from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the complaint be dismissed, plaintiffs to pay the costs.

Respectfully submitted,

Jervis Langdon, Jr., 302 B&O Bldg., Baltimore 1, Maryland;

[fol. 5211] John Henry Lewin, 1409 Mercantile Trust Bldg., Baltimore 2, Maryland;

John W. Hanifin, 1500 First National Bank Bldg., Richmond 10, Virginia;

Robert B. Claytor, Norfolk and Western Bldg., Roanoke 17, Virginia;

Martin A. Meyer, Jr., 1110 Investment Bldg., Washington 5, D. C.;

Richard R. Bongartz, 1138 Six Penn Center Plaza, Philadelphia 4, Pennsylvania;

William P. Quinn, 415 Reading Terminal, Philadelphia 7, Pennsylvania;

William C. Purnell, 300 St. Paul Place, Baltimore 2, Maryland;

Counsel for Intervening Defendants.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 21, 1961.

[fol. 5212] Certificate (omitted in printing).

[fol. 5213]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF RAILROAD INTERVENING DEFENDANTS TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFF, MASSACHUSETTS PORT AUTHORITY—Filed July 24, 1961

The Baltimore and Ohio Railroad Company, Canton Railroad Company, The Chesapeake and Ohio Railway Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, Reading Company, and Western Maryland Railway Company, intervening defendants, answering the amended complaint of intervening plaintiff, Massachusetts Port Authority:

I.

Admit the material allegations contained in Paragraphs I through IV, inclusive.

II.

Deny the material allegations contained in Paragraph V, except that they admit the material allegations contained [fol. 5214] in the first subparagraph thereof, and admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

III.

Admit the material allegations contained in the last sentence of Paragraph VI referring to the tariff publications at issue. The balance of Paragraph VI requires no answer because it alleges the motive for the publication of the rates between Boston and each of the major North Atlantic ports from New York north, on the one hand, and Affected Territory, on the other hand, which rates the Commission has disapproved.

IV.

Admit the material allegations contained in Paragraphs VII and VIII.

V.

Paragraph IX is a series of selected statements characterized by intervening plaintiff as findings of the Commission in its report and order of December 5, 1960 and includes interpretation by intervening plaintiff. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the original report and order dated December 5, 1960 and to the report on reconsideration dated June 15, 1961 for a complete statement of the findings underlying and supporting the decision.

[fol. 5215]

VI.

Deny all material allegations contained in Paragraph X, except that they admit the Commission ordered the cancellation of the proposed parity rates.

VII.

Admit the material allegations contained in Paragraphs XI and XII.

VIII.

Deny all material allegations contained in Paragraph XIII, except that they admit the Commission handed down its report on reconsideration under date of June 15, 1961,

in which among other things two corrections were made in Appendix E to the original report, and further admit the quoted portions of the paragraph were taken from the sources cited.

IX.

Deny the material allegations contained in Paragraphs XIV to XVI, inclusive.

X.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

XI.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the Boston rates and/or the New York, [fol. 5216] Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia, and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates to and from the first named ports would require approval of the reduced rates to and from Baltimore, Philadelphia, and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of intervening plaintiff be dismissed, intervening plaintiff to pay the costs.

Respectfully submitted,

Jervis Langdon, Jr., 302 B&O Bldg., Baltimore 1, Maryland;

John Henry Lewin, 1409 Mercantile Trust Bldg., Baltimore 2, Maryland;

John W. Hanifin, 1500 First National Bank Bldg., Richmond 10, Virginia;

Robert B. Claytor, Norfolk and Western Bldg., Roanoke 17, Virginia;

Martin A. Meyer, Jr., 1110 Investment Bldg., Washington 5, D. C.;

Richard R. Bongartz, 1138 Six Penn Center Plaza, Philadelphia 4, Pennsylvania;

William P. Quinn, 415 Reading Terminal, Philadelphia 7, Pennsylvania;

William C. Purnell, 300 St. Paul Place, Baltimore 2, Maryland,

Counsel for Intervening Defendants.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 21, 1961.

[fol. 5217] Certificate of Service (omitted in printing).

[fol. 5218]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF RAILROAD INTERVENING DEFENDANTS TO THE AMENDED COMPLAINT OF THE SEVERAL RAILROAD INTERVENING PLAINTIFFS—Filed July 24, 1961

The Baltimore and Ohio Railroad Company, Canton Railroad Company, The Chesapeake and Ohio Railway

Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, Reading Company, and Western Maryland Railway Company, intervening defendants, answering the complaint of the several railroad intervening plaintiffs [Delaware and Hudson Railroad Corporation, Erie-Lackawanna Railroad Company, Grand Trunk Railway System—Lines East (Canadian National Railway Company), New York Central Railroad Company, New York, New Haven and Hartford Railroad Company, and New York, Susquehanna and Western Railroad Company]:

I.

Admit the material allegations contained in Paragraphs I through X, inclusive.

[fol. 5219]

II.

Admit the material allegations contained in Paragraph XI except aver that the rates published by the railroads serving Baltimore, Philadelphia and Hampton Roads were published to become effective simultaneously with the rates published by the railroads serving New York, Albany, Boston and Portland.

III.

Deny the material allegations contained in Paragraph XII, except that they admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admit the material allegations contained in Paragraph XIII.

In further answer, intervening defendants aver that the Commission has postponed its order requiring the cancellation of the tariffs found not justified until further order of the Commission because of the pendency of the instant proceeding.

V.

Admit the material allegations contained in subparagraph (1) of Paragraph XIV except that the order requiring cancellation of the tariffs found not justified has been postponed until further order of the Commission. The remainder of Paragraph XIV consists of selected statements paraphrased from the Commission's reports, interspersed with direct quotations, and includes interpretation of the [fol. 5220] statements by intervening plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report dated December 5, 1960 and of the report on reconsideration dated June 15, 1961 for a complete statement of the basis for the decision by the Commission.

VI.

Deny the material allegations contained in Paragraphs XV and XVI.

VII.

Deny each and all of the allegations contained in the complaint of these intervening plaintiffs except as herein expressly admitted.

VIII.

In further answer to the complaint of these intervening plaintiffs, intervening defendants aver that if the Court should enjoin, set aside and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the rates to and from Boston, Albany and Portland, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates to and from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the com-
[fol. 5221] plaint of these intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

Jervis Langdon, Jr., 302 B&O Bldg., Baltimore 1, Maryland;

John Henry Lewin, 1409 Mercantile Trust Bldg., Baltimore 2, Maryland;

John W. Hanifin, 1500 First National Bank Bldg., Richmond 10, Virginia;

Robert B. Claytor, Norfolk and Western Bldg., Roanoke 17, Virginia;

Martin A. Meyer, Jr., 1110 Investment Bldg., Washington 5, D. C.;

Richard R. Bongartz, 1138 Six Penn Center Plaza, Philadelphia 4, Pennsylvania;

William P. Quinn, 415 Reading Terminal, Philadelphia 7, Pennsylvania;

William C. Purnell, 300 St. Paul Place, Baltimore 2, Maryland,

Counsel for Intervening Defendants.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 21, 1961.

[fol. 5222] Certificate of Service (omitted in printing).

[fol. 5223]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF RAILROAD INTERVENING DEFENDANTS TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFFS, THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL.—Filed July 24, 1961

The Baltimore and Ohio Railroad Company, Canton Railroad Company, The Chesapeake and Ohio Railway Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, Reading Company, and Western Maryland Railway Company, intervening defendants, answering the amended complaint of intervening plaintiffs, The Port of New York Authority, The State of New York, The City of New York, et al.:

I.

Deny the allegation in Paragraph I that the commerce of the port of New York is obstructed or disadvantaged by rail transportation rates compared with rates applying to [fol. 5224] and from other ports. Admit all other material allegations contained in Paragraph I.

II.

Deny the allegations in Paragraph II that the existing port differential freight rate adjustment has impaired or is impairing foreign trade through the port of New York

and that said port differential rates are detrimental to the interests of the People of the State of New York. Admit all other material allegations in Paragraph II.

III.

Admit the material allegations contained in Paragraphs III through IX, inclusive.

IV.

Paragraph X is an incomplete paraphrasing of certain statements in the Commission's original report dated December 5, 1960 and the report on reconsideration dated June 15, 1961 interpreted by intervening plaintiffs. As such, the allegations contained in Paragraph X are argumentative and require no answer. The Court is respectfully referred to the entire text of the aforementioned reports of the Commission for the complete analysis and basis for decision.

V.

Deny the material allegations contained in Paragraphs XI and XII.

[fol. 5225]

VI.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

VII.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the Boston, Albany and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates to and from the first named

ports would require approval of the reduced rates to and from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

Jervis Langdon, Jr., 302 B&O Bldg., Baltimore 1, Maryland;

John Henry Lewin, 1409 Mercantile Trust Bldg., Baltimore 2, Maryland;

John W. Hanifin, 1500 First National Bank Bldg., Richmond 10, Virginia;

Robert B. Claytor, Norfolk and Western Bldg., Roanoke 17, Virginia;

[fol. 5226] Martin A. Meyer, Jr., 1110 Investment Bldg., Washington 5, D. C.;

Richard R. Bongartz, 1138 Six Penn Center Plaza, Philadelphia 4, Pennsylvania;

William P. Quinn, 415 Reading Terminal, Philadelphia 7, Pennsylvania;

William C. Purnell, 300 St. Paul Place, Baltimore 2, Maryland,

Counsel for Intervening Defendants.

Of Counsel: Theodore Chase, Palmer Dodge Gardner & Bradford, 53 State Street, Boston 9, Massachusetts.

Dated: July 21, 1961.

[fol. 5226a] Certificate of Service (omitted in printing).

[fol. 5227]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE CITY OF PHILADELPHIA TO AMENDED COMPLAINT—Filed July 24, 1961

The City of Philadelphia answers the amended complaint as follows:

I.

Admits the material allegations contained in Paragraphs I through V.

II.

Admits the material allegations contained in Paragraph VI, except that it denies that the present rates to and from Boston are differentially higher than the rates to and from Hampton Roads and all destinations in Affected Territory, and further deny that the rates to and from Albany are higher than the rates to and from Philadelphia and Affected Territory.

In further answer, it avers that the rates applicable on import-export traffic between New York and Affected Territory are the same as the rates applicable between Boston and that territory, that the export rates to Portland, Maine from Affected Territory are also the same as the rates to Boston, and that the rates between Albany and Affected Territory are the same as the rates between Philadelphia and the same territory.

[fol. 5228]

III.

Denies the material allegations contained in Paragraph VII, except that it admits that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admits the material allegations contained in Paragraph VIII.

In further answer to this paragraph, it avers that the effective date of the Commission's order requiring the cancellation of the tariffs found not justified has been postponed until further order of the Commission as a result of the pendency of the instant proceeding.

V.

The allegations contained in Paragraph IX are a series of selected statements characterized as findings of the Commission made in its report of December 5, 1960 and include interpretation of the statements by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report and order dated December 5, 1960 and of the report on reconsideration dated June 15, 1961 for a complete statement of the findings upon which the decision is based.

VI.

Admits the material allegations contained in Paragraph X, inclusive.

VII.

Admits the material allegations contained in Paragraphs XI to XIII, inclusive.

VIII.

The allegations contained in Paragraph XIV are selected statements taken from the report of the Commission on

reconsideration dated June 15, 1961 interpreted by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the reports of the Commission dated December 5, 1960 and June 15, 1961 for a complete statement of the findings and conclusions upon which the decision is based.

[fol. 5229]

IX.

Denies the material allegations contained in Paragraph XV, except that they admit the quoted portion was taken from the Commission's original report dated December 5, 1960.

X.

Denies the material allegations contained in Paragraphs XVI to XVIII, inclusive.

XI.

Denies each and all of the allegations contained in the complaint except as herein expressly admitted.

XII.

In further answer to the complaint, the City of Philadelphia avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the Boston rates, and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates to and from the first named ports would require approval of the reduced rates to and from Baltimore, Philadelphia and Hampton Roads.

Whereupon, the City of Philadelphia prays that the complaint be dismissed, plaintiffs to pay the costs.

Respectfully submitted,

David Berger, City Solicitor, Lewis Kates, Deputy to the City Solicitor, 703 City Hall Annex, Philadelphia 7, Pennsylvania;

Herbert B. Ehrmann, Raya S. Dreben, 50 Federal Street, Boston 10, Mass.,

Solicitors for the City of Philadelphia.

July 24, 1961.

Of Counsel: William C. Burt, Robert M. Beckman, Koteen & Burt, 1000 Vermont Avenue, N. W., Washington 5, D. C.

[fol. 5230] Certificate of Service (omitted in printing).

[fol. 5231]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE CITY OF PHILADELPHIA TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFF, MASSACHUSETTS PORT AUTHORITY—Filed July 24, 1961

The City of Philadelphia answers the amended complaint of intervening plaintiff, Massachusetts Port Authority as follows:

I.

Admits the material allegations contained in Paragraphs I through IV, inclusive.

II.

Denies the material allegations contained in Paragraph V, except that it admits the material allegations contained in the first subparagraph thereof, and admits that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

III.

Admits the material allegations contained in the last sentence of Paragraph VI referring to the tariff publications at issue. The balance of Paragraph VI requires no answer because it alleges the motive for the publication of [fol. 5232] the rates between Boston and each of the major North Atlantic ports from New York north, on the one hand, and Affected Territory, on the other hand, which rates the Commission has disapproved.

IV.

Admits the material allegations contained in Paragraphs VII and VIII.

V.

Paragraph IX is a series of selected statements characterized by intervening plaintiff as findings of the Commission in its report and order of December 5, 1960 and includes interpretation by intervening plaintiff. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the original report and order dated December 5, 1960 and to the report on reconsideration dated June 15, 1961 for a complete statement of the findings underlying and supporting the decision.

VI.

Denies all material allegations contained in Paragraph X, except that it admits the Commission ordered the cancellation of the proposed parity rates.

VII.

Admits the material allegations contained in Paragraphs XI and XII.

VIII.

Denies all material allegations contained in Paragraph XIII, except that it admits the Commission handed down its report on reconsideration under date of June 15, 1961, in which among other things two corrections were made in Appendix E to the original report, and further admits the quoted portions of the paragraph were taken from the sources cited.

IX.

Denies the material allegations contained in Paragraphs XIV to XVI, inclusive.

X.

Denies each and all of the allegations contained in the complaint except as herein expressly admitted.

XI.

In further answer to the complaint, the City of Philadelphia avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the Boston rates and/or the New York, [fol. 5233] Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia, and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates to and from the first named ports would require approval of the reduced

rates to and from Baltimore, Philadelphia and Hampton Roads.

Whereupon, the City of Philadelphia prays that the complaint of intervening plaintiff be dismissed, intervening plaintiff to pay the costs.

Respectfully submitted,

David Berger, City Solicitor, Lewis Kates, Deputy to the City Solicitor, 703 City Hall Annex, Philadelphia 7, Pennsylvania;

Herbert B. Ehrmann, Raya S. Dreben, 50 Federal Street, Boston 10, Mass.,

Solicitors for the City of Philadelphia.

Of Counsel: William C. Burt, Robert M. Beckman, Koteen & Burt, 1000 Vermont Avenue, N. W., Washington 5, D. C.

July 24, 1961.

[fol. 5234] Certificate of Service (omitted in printing).

[fol. 5235]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE CITY OF PHILADELPHIA TO THE AMENDED COMPLAINT OF THE SEVERAL RAILROAD INTERVENING PLAINTIFFS—Filed July 24, 1961

The City of Philadelphia answers the complaint of the several railroad intervening plaintiffs (Delaware and Hudson Railroad Corporation, Erie-Lackawanna Railroad Company, Grand Trunk Railway System—Lines East (Canadian National Railway Company), New York Central Railroad Company, New York, New Haven and Hartford Railroad Company, and New York, Susquehanna and Western Railroad Company) as follows:

I.

Admits the material allegations contained in Paragraphs I through X, inclusive.

II.

Admits the material allegations contained in Paragraph XI except aver that the rates published by the railroads serving Baltimore, Philadelphia and Hampton Roads were published to become effective simultaneously with the rates published by the railroads serving New York, Albany, Boston and Portland.

[fol. 5236]

III.

Denies the material allegations contained in Paragraph XII, except that they admit that beginning long prior to 1935 and extending to about that year, the published ocean rates to and from the different ports were gradually equalized.

IV.

Admits the material allegations contained in Paragraph XIII.

In further answer, it avers that the Commission has portponed its order requiring the cancellation of the tariffs found not justified until further order of the Commission because of the pendency of the instant proceeding.

V.

Admits the material allegations contained in subparagraph (1) of Paragraph XIV except that the order requiring cancellation of the tariffs found not justified has been postponed until further order of the Commission. The remainder of Paragraph XIV consists of selected statements paraphrased from the Commission's reports, interspersed with direct quotations, and includes interpretation of the statements by intervening plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report dated December 5, 1960 and of the report on reconsideration dated June 15, 1961 for a complete statement of the basis for the decision by the Commission.

VI.

Denies the material allegations contained in Paragraphs XV and XVI.

VII.

Denies each and all of the allegations contained in the complaint of these intervening plaintiffs except as herein expressly admitted.

VIII.

In further answer to the complaint of these intervening plaintiffs, the City of Philadelphia avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the rates to and from Boston, Albany and Portland, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the [fol. 5237] Commission (sheet 76 of the original report), approval of the rates to and from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Whereupon, the City of Philadelphia prays that the complaint of these intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

David Berger, City Solicitor, Lewis Kates, Deputy to the City Solicitor, 703 City Hall Annex, Philadelphia 7, Pennsylvania;

Herbert B. Ehrmann, Raya S. Dreben, 50 Federal Street, Boston 10, Mass.,

Solicitors for the City of Philadelphia.

Of Counsel: William C. Burt, Robert M. Beckman, Koteen & Burt, 1000 Vermont Avenue, N. W., Washington 5, D. C.

July 24, 1961.

[fol. 5238] Certificate of Service (omitted in printing).

[fol. 5239]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE CITY OF PHILADELPHIA TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFFS, THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL.—Filed July 24, 1961

The City of Philadelphia answers the amended complaint of intervening plaintiffs, The Port of New York Authority, The State of New York, The City of New York, et al. as follows:

I.

Denies the allegation in Paragraph I that the commerce of the port of New York is obstructed or disadvantaged by rail transportation rates compared with rates applying to and from other ports. Admits all other material allegations contained in Paragraph I.

II.

Denies the allegations in Paragraph II that the existing port differential freight rate adjustment has impaired or is impairing foreign trade through the port of New York and that said port differential rates are detrimental to the interests of the People of the State of New York. Admit all other material allegations in Paragraph II.

[fol. 5240]

III.

Admits the material allegations contained in Paragraphs III through IX, inclusive.

IV.

The allegations contained in Paragraph X are argumentative and require no answer. The Court is respectfully referred to the entire text of the aforementioned reports of the Commission for the complete analysis and basis for decision.

V.

Denies the material allegations contained in Paragraphs XI and XII.

VI.

Denies each and all of the allegations contained in the complaint except as herein expressly admitted.

VII.

In further answer to the complaint, it is averred that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the Boston, Albany and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions to and from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates to and from the first named ports would require approval of the reduced rates to and from Baltimore, Philadelphia and Hampton Roads.

Wherefore, the City of Philadelphia prays that the complaint of intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

David Berger, City Solicitor, Lewis Kates, Deputy to the City Solicitor, 703 City Hall Annex, Philadelphia 7, Pennsylvania;

Herbert B. Ehrmann, Raya S. Dreben, 50 Federal Street, Boston 10, Mass.,

Solicitors for the City of Philadelphia.

July 24, 1961.

Of Counsel:. William C. Burt, Robert M. Beckman, Koteen & Burt, 1000 Vermont Avenue, N. W., Washington 5, D. C.

[fol. 5241] Certificate of Service (omitted in printing).

[fol. 5242]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF VIRGINIA STATE PORTS AUTHORITY AND NORFOLK PORT AND INDUSTRIAL AUTHORITY, INTERVENING DEFENDANTS, TO AMENDED COMPLAINT—Filed July 24, 1961

The Virginia State Ports Authority and the Norfolk Port and Industrial Authority, intervening defendants, answering the amended complaint:

I.

Admit the material allegations contained in Paragraphs I through V.

II.

Admit the material allegations contained in Paragraph VI, except that they deny that the present rates to and from Boston are differentially higher than the rates between Hampton Roads and all destinations in Affected Territory.

In further answer, intervening defendants aver that the rates applicable on import-export traffic between New York [fol. 5243] and Affected Territory are the same as the rates applicable between Boston and that territory, and that the export rates to Portland, Maine from Affected Territory are also the same as the rates to Boston.

III.

Deny the material allegations contained in Paragraph VII, except that they admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admit the material allegations contained in Paragraph VIII, except that intervening defendants aver that the effective date of the Commission's order requiring the cancellation of the tariffs found not justified has been postponed until further order of the Commission as a result of the pendency of the instant proceeding.

V.

The allegations contained in Paragraph IX are a series of selected statements characterized as findings and conclusions of the Commission made in its report of December 5, 1960, and include interpretation of the statements by plaintiffs. As such, these allegations are argumentative and do not require answer. The Court is respectfully re-

ferred to the entire texts of the original report and order dated December 5, 1960, and of the report on reconsideration dated June 15, 1961, for a complete statement of the findings upon which the decision is based.

VI.

Deny the material allegations contained in Paragraph X.

VII.

Admit the material allegations contained in Paragraphs XI to XIII, inclusive.

[fol. 5244]

VIII.

The allegations contained in Paragraph XIV are selected statements taken from the report of the Commission on reconsideration dated June 15, 1961 interpreted by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the reports of the Commission dated December 5, 1960 and June 15, 1961 for a complete statement of the findings and conclusions upon which the decision is based.

IX.

Deny the material allegations contained in Paragraph XV, except that they admit the quotation is from the Commission's report on reconsideration dated June 15, 1961.

X.

Deny the material allegations contained in Paragraphs XVI to XVIII, inclusive.

XI.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

XII.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the Boston rates, and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

[fol. 5245] Wherefore, intervening defendants pray that the complaint be dismissed, plaintiffs to pay the costs.

Respectfully submitted,

Chas. R. Seal, 1600 Maritime Tower, Norfolk 10, Virginia;

Charles E. Holly, 84 State Street, Boston 9, Massachusetts,

Counsel for Intervening Defendants.

July 21, 1961

Certificate of Service (omitted in printing).

[fol. 5246]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF VIRGINIA STATE PORTS AUTHORITY AND NORFOLK PORT AND INDUSTRIAL AUTHORITY, INTERVENING DEFENDANTS, TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFF, MASSACHUSETTS PORT AUTHORITY—Filed July 24, 1961

The Virginia State Ports Authority and the Norfolk Port and Industrial Authority, intervening defendants, answering the amended complaint of intervening plaintiff, Massachusetts Port Authority:

I.

Admit the material allegations contained in Paragraphs I through IV, inclusive.

II.

Deny the material allegations contained in Paragraph V, except that they admit the material allegations contained in [fol. 5247] the first subparagraph thereof, and admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

III.

Admit the material allegations contained in the last sentence of Paragraph VI referring to the tariff publications at issue. The balance of Paragraph VI requires no answer because it alleges the motive for the publication of the rates between Boston and each of the major North Atlantic ports from New York north, on the one hand, and Affected Territory, on the other hand, which rates the Commission has disapproved.

IV.

Admit the material allegations contained in Paragraphs VII and VIII.

V.

Paragraph IX is a series of selected statements characterized by intervening plaintiff as findings of the Commission in its report and order of December 5, 1960 and includes interpretation by intervening plaintiff. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the original report and order dated December 5, 1960 and to the report on reconsideration dated June 15, 1961 for a complete statement of the findings underlying and supporting the decision.

VI.

Deny all material allegations contained in Paragraph X, except that they admit the Commission ordered the cancellation of the proposed parity rates.

VII.

Admit the material allegations contained in Paragraphs XI and XII.

[fol. 5248]

VIII.

Deny all material allegations contained in Paragraphs XIII to XVI, inclusive, except that they admit, as alleged in Paragraph XIII, that the Commission handed down its

report on reconsideration under date of June 15, 1961, in which among other things two corrections were made in Appendix E to the original report, and further admit the quoted portions of the paragraph were taken from the report on reconsideration dated June 15, 1961.

IX.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

X.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960, with respect to the Boston rates and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia, and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia, and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of intervening plaintiff be dismissed, intervening plaintiff to pay the costs.

Respectfully submitted,

Chas. R. Seal, 1600 Maritime Tower, Norfolk 10, Virginia;

Charles E. Holly, 84 State Street, Boston 9, Massachusetts,

Counsel for Intervening Defendants.

Dated: July 21, 1961.

[fol. 5249] Certificate of Service (omitted in printing).

[fol. 5250]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF INTERVENING DEFENDANTS, VIRGINIA STATE PORTS AUTHORITY AND NORFOLK PORT AND INDUSTRIAL AUTHORITY, TO THE AMENDED COMPLAINT OF THE SEVERAL RAILROAD INTERVENING PLAINTIFFS—Filed July 24, 1961

The Virginia State Ports Authority and the Norfolk Port and Industrial Authority, intervening defendants, answering the complaint of the several railroad intervening plaintiffs (Delaware and Hudson Railroad Corporation, Erie-Lackawanna Railroad Company, Grand Trunk Railway System—Lines East [Canadian National Railway Company], New York Central Railroad Company, New York, New Haven and Hartford Railroad Company, and New York, Susquehanna and Western Railroad Company);

I.

Admit the material allegations contained in Paragraphs [fol. 5251] I through X, inclusive.

II.

Admit the material allegations contained in Paragraph XI except aver that the rates published by the railroads serving Baltimore, Philadelphia and Hampton Roads were

published to become effective simultaneously with the rates published by the railroads serving New York, Albany, Boston and Portland, and except aver that the proposed reduction on flour was 2 cents per 100 pounds instead of 1 cent as alleged.

III.

Deny the material allegations contained in Paragraph XII, except that they admit that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

IV.

Admit the material allegations contained in Paragraph XIII.

In further answer, intervening defendants aver that the Commission has postponed its order requiring the cancellation of the tariffs found not justified until further order of the Commission because of the pendency of the instant proceeding.

V.

Admit the material allegations contained in subparagraph (1) of Paragraph XIV except that the order requiring cancellation of the tariffs found not justified has been postponed until further order of the Commission. The remainder of Paragraph XIV consists of selected statements paraphrased from the Commission's reports, interspersed with direct quotations, and includes interpretation of the statements by intervening plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the [fol. 5252] original report dated December 5, 1960 and of the report on reconsideration dated June 15, 1961 for a complete statement of the basis for the Commission's findings and conclusions.

VI.

Deny the material allegations contained in Paragraphs XV and XVI.

VII.

Deny each and all of the allegations contained in the complaint of these intervening plaintiffs except as herein expressly admitted.

VIII.

In further answer to the complaint of these intervening plaintiffs, intervening defendants aver that if the Court should enjoin, set aside and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the rates to and from Boston, Albany and Portland, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of these intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

Chas. R. Seal, 1600 Maritime Tower, Norfolk 10, Virginia;

Charles E. Holly, 84 State Street, Boston 9, Massachusetts,

Counsel for Intervening Defendants.

July 21, 1961.

[fol. 5253] Certificate of Service (omitted in printing).

[fol. 5254]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38 S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER ON BEHALF OF INTERVENING DEFENDANTS, VIRGINIA STATE PORTS AUTHORITY AND NORFOLK PORT AND INDUSTRIAL AUTHORITY, TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFFS, THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL.—Filed July 24, 1961

The Virginia State Ports Authority and the Norfolk Port and Industrial Authority, intervening defendants, answering the amended complaint of intervening plaintiffs, The Port of New York Authority, The State of New York, The City of New York, et al.:

I.

Deny the allegation in Paragraph I that the commerce of the port of New York is obstructed or disadvantaged by rail transportation rates compared with rates applying to and from other ports. Admit all other material allegations contained in Paragraph I.

[fol. 5255]

II.

Deny the allegations in Paragraph II that the existing port differential freight rate adjustment has impaired or is impairing foreign trade through the port of New York

and that said port differential rates are detrimental to the interests of the People of the State of New York. Admit all other material allegations in Paragraph II.

III.

Admit the material allegations contained in Paragraphs III through IX, inclusive.

IV.

Paragraph X is an incomplete paraphrasing of certain statements in the Commission's original report dated December 5, 1960 and the report on reconsideration dated June 15, 1961 as interpreted by intervening plaintiffs. As such, the allegations contained in Paragraph X are argumentative and require no answer. The Court is respectfully referred to the entire text of the aforementioned reports of the Commission for the complete analysis and basis for decision.

V.

Deny the material allegations contained in Paragraphs XI and XII.

VI.

Deny each and all of the allegations contained in the complaint except as herein expressly admitted.

VII.

In further answer to the complaint, intervening defendants aver that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960 with respect to the New York rates and/or the Boston, Albany and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and [fol. 5256] Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named

ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendants pray that the complaint of intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

Chas. R. Seal, 1600 Maritime Tower, Norfolk 10, Virginia;

Charles E. Holly, 84 State Street, Boston 9, Massachusetts,

Counsel for Intervening Defendants.

Dated: July 21, 1961.

Certificate of Service (omitted in printing).

[fol. 5257]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF DELAWARE RIVER PORT AUTHORITY, INTERVENING DEFENDANT, TO AMENDED COMPLAINT—Filed July 24, 1961

Comes now the Delaware River Port Authority, intervening defendant in the above-entitled proceeding, and answering the amended complaint:

I.

Admits the material allegations contained in Paragraphs I through V.

II.

Admits the material allegations contained in Paragraph VI, except that it denies that the present rates from Boston are differentially higher than the rates from Hampton Roads to all destinations in Affected Territory.

In further answer, intervening defendant avers that the rates applicable on import-export traffic between New York and Affected Territory are the same as the rates applicable between Boston and that territory, and that the export rates to Portland, Maine from Affected Territory are also the same as the rates to Boston.

III.

Denies the material allegations contained in Paragraph VII, except that it admits that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

[fol. 5258]

IV.

Admits the material allegations contained in Paragraph VIII.

In further answer to this paragraph, intervening defendant avers that the effective date of the Commission's order requiring the cancellation of the tariffs found not justified has been postponed until further order of the Commission as a result of the pendency of the instant proceeding.

V.

The allegations contained in Paragraph IX are a series of selected statements characterized as findings of the Commission made in its report of December 5, 1960, and include interpretation of the statements by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report and order dated December 5, 1960, and of the report on reconsideration dated June 15, 1961, for a complete statement of the findings upon which the decision is based.

VI.

Denies the material allegations contained in Paragraph X.

VII.

Admits the material allegations contained in Paragraphs XI to XIII, inclusive.

VIII.

The allegations contained in Paragraph XIV are selected statements taken from the report of the Commission on reconsideration dated June 15, 1961, interpreted by plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the reports of the Commission dated December 5, 1960, and June 15, 1961, for a complete statement of the findings and conclusions upon which the decision is based.

IX.

Denies the material allegations contained in Paragraph XV, except that it admits the quoted portion was taken from the Commission's report on reconsideration dated June 15, 1961.

[fol. 5259]

X.

Denies the material allegations contained in Paragraphs XVI to XVIII, inclusive.

XI.

Denies each and all of the allegations contained in the amended complaint except as herein expressly admitted.

XII.

In further answer to the amended complaint, intervening defendant avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960, with respect to the Boston rates, and/or the New York,

Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendant prays that the amended complaint be dismissed, plaintiffs to pay the costs.

Respectfully submitted,

Charles M. Ewing, 73 Tremont Street, Boston 8, Massachusetts;

Morris Duane, Duane, Morris & Heckscher, 1617 Land Title Building, Philadelphia 10, Pa.;

Bruce A. Wallace, 328 Market Street, Camden 2, N. J.;

Francis W. Sullivan, 1700 Girard Trust Building, Philadelphia 2, Pa.;

Warren Price, Jr., 1039 Investment Building, Washington 5, D. C.,

Attorneys for Intervening Defendant, Delaware River Port Authority.

[fol. 5260]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF DELAWARE RIVER PORT AUTHORITY, INTERVENING DEFENDANT, TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFF, MASSACHUSETTS PORT AUTHORITY—Filed July 24, 1961

Comes now the Delaware River Port Authority, intervening defendant in the above-entitled proceeding, and answering the amended complaint of intervening plaintiff, Massachusetts Port Authority:

I.

Admits the material allegations contained in Paragraphs I through IV, inclusive.

II.

Denies the material allegations contained in Paragraph V, except that it admits the material allegations contained in the first subparagraph thereof, and admits that beginning long prior to 1935 and extending to about that year the published ocean rates to and from the different ports were gradually equalized.

III.

Admits the material allegations contained in the last sentence of Paragraph VI referring to the tariff publi-

cations at issue. The balance of Paragraph VI requires no answer because it alleges the motive for the publication of the rates between Boston and each of the major North Atlantic ports from New York north, on the one hand, and Affected Territory, on the other hand, which rates the Commission has disapproved.

[fol. 3261]

IV.

Admits the material allegations contained in Paragraphs VII and VIII.

V.

Paragraph IX is a series of selected statements characterized by intervening plaintiff as findings of the Commission in its report and order of December 5, 1960, and includes interpretation by intervening plaintiff. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the original report and order dated December 5, 1960, and to the report on reconsideration dated June 15, 1961, for a complete statement of the findings underlying and supporting the decision.

VI.

Denies all material allegations contained in Paragraph X, except that it admits the Commission ordered the cancellation of the proposed parity rates.

VII.

Admits the material allegations contained in Paragraphs XI and XII.

VIII.

Denies all material allegations contained in Paragraph XIII, except that it admits the Commission handed down its report on reconsideration under date of June 15, 1961, in which among other things two corrections were made in Appendix E to the original report, and further admits the quoted portions of the paragraph were taken from the report on reconsideration dated June 15, 1961.

IX.

Denies the material allegations contained in Paragraphs XIV to XVI, inclusive.

X.

Denies each and all of the allegations contained in the amended complaint except as herein expressly admitted.

[fol. 5262]

XI.

In further answer to the amended complaint, intervening defendant avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960, with respect to the Boston rates and/or the New York, Albany, and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia, and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia, and Hampton Roads.

Wherefore, intervening defendant prays that the amended complaint be dismissed, intervening plaintiff to pay the costs.

Respectfully submitted,

Charles M. Ewing, 73 Tremont Street, Boston 8, Massachusetts;

Morris Duane, Duane, Morris & Heckscher, 1617 Land Title Building, Philadelphia 10, Pa.;

Bruce A. Wallace, 328 Market Street, Camden 2, N. J.;

Francis W. Sullivan, 1700 Girard Trust Building, Philadelphia 2, Pa.;

Warren Price, Jr., 1039 Investment Building, Washington 5, D. C.,

Attorneys for Intervening Defendant, Delaware River Port Authority.

[fol. 5263]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF DELAWARE RIVER PORT AUTHORITY, INTERVENING DEFENDANT, TO THE AMENDED COMPLAINT OF THE SEVERAL RAILROAD INTERVENING PLAINTIFFS—Filed July 24, 1961

Comes now the Delaware River Port Authority, intervening defendant in the above-entitled proceeding, and answering the amended complaint of the several railroad intervening plaintiffs, i.e., Delaware and Hudson Railroad Corporation, Erie-Lackawanna Railroad Company, Grand Trunk Railway System—Lines East (Canadian National Railway Company), New York Central Railroad Company, New York, New Haven and Hartford Railroad Company, and New York, Susquehanna and Western Railroad Company:

I.

Admits the material allegations contained in Paragraphs I through X, inclusive.

II.

Admits the material allegations contained in Paragraph XI except avers that the rates published by the railroads serving Baltimore, Philadelphia and Hampton Roads were published to become effective simultaneously with the rates published by the railroads serving New York, Albany, Boston and Portland.

III.

Denies the material allegations contained in Paragraph XII, except that it admits that beginning long prior to 1935 and extending to about that year the published ocean rates [fol. 5264] to and from the different ports were gradually equalized.

IV.

Admits the material allegations contained in Paragraph XIII.

In further answer, intervening defendant avers that the Commission has postponed its order requiring the cancellation of the tariffs found not justified until further order of the Commission because of the pendency of the instant proceeding.

V.

Admits the material allegations contained in subparagraph (1) of Paragraph XIV except that the order requiring cancellation of the tariffs found not justified has been postponed until further order of the Commission. The remainder of Paragraph XIV consists of selected statements paraphrased from the Commission's reports, interspersed with direct quotations, and includes interpretation of the statements by intervening plaintiffs. As such, these allegations are argumentative and require no answer. The Court is respectfully referred to the entire texts of the original report dated December 5, 1960, and of the report on reconsideration dated June 15, 1961, for a complete statement of the basis for the decision by the Commission.

VI.

Denies the material allegations contained in Paragraphs XV and XVI.

VII.

Denies each and all of the allegations contained in the amended complaint of these intervening plaintiffs except as herein expressly admitted.

VIII.

In further answer to the amended complaint of these intervening plaintiffs, intervening defendant avers that if the Court should enjoin, set aside and annul the order of the Commission dated December 5, 1960, with respect to the New York rates and/or the rates to and from Boston, [fol. 5265] Albany and Portland, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendant prays that the amended complaint of these intervening plaintiffs be dismissed, intervening plaintiffs to pay the costs.

Respectfully submitted,

Charles M. Ewing, 73 Tremont Street, Boston 8, Massachusetts;

Morris Duane, Duane, Morris & Heckscher, 1617 Land Title Building, Philadelphia 10, Pa.;

Bruce A. Wallace, 328 Market Street, Camden 2, N. J.;

Francis W. Sullivan, 1700 Girard Trust Building, Philadelphia 2, Pa.;

Warren Price, Jr., 1039 Investment Building, Washington 5, D. C.,—

Attorneys for Intervening Defendant, Delaware River Port Authority.

[fol. 5266]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF DELAWARE RIVER PORT AUTHORITY, INTERVENING DEFENDANT, TO THE AMENDED COMPLAINT OF INTERVENING PLAINTIFFS, THE PORT OF NEW YORK AUTHORITY, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ET AL.—Filed July 24, 1961

Comes now the Delaware River Port Authority, intervening defendant in the above-entitled proceeding, and answering the amended complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, the City of New York, et al.:

I.

Denies the allegation in Paragraph I that the commerce of the port of New York is obstructed or disadvantaged by rail transportation rates compared with rates applying to and from other ports. Admits all other material allegations contained in Paragraph I.

II.

Denies the allegations in Paragraph II that the existing port differential freight rate adjustment has impaired or is impairing foreign trade through the port of New York and that said port differential rates are detrimental to the interests of the People of the State of New York. Admits all other material allegations in Paragraph II.

III.

Admits the material allegations contained in Paragraphs III through IX, inclusive.

[fol. 5267]

IV.

Paragraph X is an incomplete paraphrasing of certain statements in the Commission's original report dated December 5, 1960, and the report on reconsideration dated June 15, 1961. interpreted by intervening plaintiffs. As such, the allegations contained in Paragraph IX are argumentative and require no answer. The Court is respectfully referred to the entire text of the aforementioned reports of the Commission for the complete analysis and basis for decision.

V.

Denies the material allegations contained in Paragraphs XI and XII.

VI.

Denies each and all of the allegations contained in the amended complaint except as herein expressly admitted.

VII.

In further answer to the amended complaint, intervening defendant avers that if the Court should enjoin, set aside, and annul the order of the Commission dated December 5, 1960, with respect to the New York rates and/or the Boston, Albany and Portland rates, it must also enjoin, set aside, and annul that portion of the Commission's order which found like reductions from Baltimore, Philadelphia and Hampton Roads not justified and ordered cancelled. As found by the Commission (sheet 76 of the original report), approval of the rates from the first named ports would require approval of the reduced rates from Baltimore, Philadelphia and Hampton Roads.

Wherefore, intervening defendant prays that the amended complaint of intervening plaintiffs be dismissed, intervening [fol. 5268] plaintiffs to pay the costs.

Respectfully submitted,

Charles M. Ewing, 73 Tremont Street, Boston 8, Massachusetts;

Morris Duane, Duane, Morris & Heckscher, 1617 Land Title Building, Philadelphia 10, Pa.;

Bruce A. Wallace, 328 Market Street, Camden 2, N. J.;

Francis W. Sullivan, 1700 Girard Trust Building, Philadelphia 2, Pa.;

Warren Price, Jr., 1039 Investment Building, Washington 5, D. C.,

Attorneys for Intervening Defendant, Delaware River Port Authority.

[fol. 5269]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

MASSACHUSETTS PORT AUTHORITY ET AL., Plaintiffs in Intervention,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

MARYLAND PORT AUTHORITY ET AL., Defendants in Intervention.

AMENDED ANSWER OF THE UNITED STATES OF AMERICA— Filed July 24, 1961

The United States of America, a defendant in the above action, in answer to the Amended Complaint of the plaintiffs and to the Amended Complaints of the intervening plaintiffs, neither admits nor denies the allegations thereof. The United States neither supports nor opposes the order of the Commission at this stage of the proceedings.

Richard A. Solomon, Attorney, Department of Justice, Washington 25, D. C.;

Lee Loevinger, Assistant Attorney General;

W. Arthur Garrity, Jr., United States Attorney,

Attorneys for the United States of America.

Certificate of Service (omitted in printing).

[fol. 5270] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

Before Woodbury, Chief Judge, United States Court of Appeals, Sweeney, Chief Judge, United States District Court, and Ford, United States District Judge.

OPINION OF THE COURT—February 16, 1962

Sweeney, Ch. J. The plaintiffs—Boston and Maine Railroad and The New York, New Haven and Hartford Railroad Company—brought this action pursuant to 28 U.S.C. §§ 1336, 2284, 2321 and 2325, to set aside and enjoin enforcement of an order of the Interstate Commerce Commission, Investigation and Suspension Docket No. 6615, Equalization of Rates at North Atlantic Ports, 311 I.C.C. [fol. 5271] 689, denying a fourth-section application and cancelling new rate schedules filed by the plaintiffs and their connecting carriers,[1] in which they proposed to re-

[1] The Delaware and Hudson Railroad Corporation, Erie-Lackawanna Railroad Company, Grand Trunk Railway System-Lines East, The New York Central Railroad Company, New York, Susquehanna and Western Railroad Company.

duce rates on export and import traffic[2] between the ports of New York and Albany, New York, Boston, Massachusetts, and Portland, Maine, hereinafter referred to as northern tier ports, on one hand, and affected territory[3] on the other. The proposal was designed to place on a parity the rates on this traffic through these ports with rates on like traffic through the southern tier ports.

The original defendants are the United States and the I.C.C. Other railroads and various port and commercial interests have intervened on both sides.[4]

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[2] Except iron ore, coal, and coke which is a direct product of coal.

[3] It includes territory on and west of a line extending from a point just west of Buffalo through Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof, certain points in Kentucky on the lines of The Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio.

[4] The intervening plaintiffs include the Massachusetts Port Authority; the Port of New York Authority; the State of New York; the City of New York; Brooklyn Chamber of Commerce, Inc.; Belleville Manufacturers' Association; Bergen County Chamber of Commerce; Bronx Board of Trade; Chamber of Commerce, Garfield, N. J.; Chamber of Commerce, Irvington, N. J.; Chamber of Commerce of Eastern Union County; Clifton Chamber of Commerce; Commerce and Industry Association of New York, Inc.; Hoboken Chamber of Commerce; Ironbound Manufacturers' Association, Inc.; The Maritime Association of the Port of New York; Newark Association of Commerce and Industry; New Jersey Industrial Traffic League, Inc.; Queensborough Chamber of Commerce; The Shippers Conference of Greater New York; The West New York Chamber of Commerce; West Side Association of Commerce in the City of New York; and the railroads listed in paragraph one.

The intervening defendants include the Baltimore and Ohio Railroad Company; Canton Railroad Company; The Chesapeake and Ohio Railway Company; Norfolk and Western Railway Company; The Pennsylvania Railroad Company; Reading Company; Western Maryland Railway Company; the Delaware River Port Authority; the Virginia State Ports Authority; Norfolk Port and Industrial Authority; City of Philadelphia; Maryland Port Authority; Baltimore Association of Commerce; and the Maine Central Railroad Company.

[fol. 5272] The differences in existing rail rates on import and export traffic are shown below.

Port	Differentials, in cents per 100 pounds					
	Classes					
	1	2	3	4	5	6
Import traffic						
Canadian ports (same as Baltimore)						
Portland (Baltimore rates via Canadian routes; New York rates via standard routes)						
Boston (same as New York)						
Albany (Philadelphia rates, subject to domestic rates as maxima)						
Philadelphia under New York	6	6	2	2	2	2
Baltimore under New York	8	8	3	3	3	3
Hampton Roads[1] (same as Baltimore)						
Export traffic						
Canadian ports:						
Halifax, St. John, et cetera (same as New York)						
Montreal (same as Philadelphia)						
Portland						
Boston (same as New York)						
Albany (Philadelphia rates, subject to domestic rates as maxima)						
Philadelphia under New York:						
Grain, 0.5 cent under N.Y.) Flour, 1 cent under N.Y.)	2	2	2	2	2	2
Baltimore under New York:						
Grain, 1.5 cents under N.Y.) Flour, 2 cents under N.Y.)	3	3	3	3	3	3
Hampton Roads[2] (same as Baltimore)						

[1] To territory west of the Sandusky, Mansfield, Zanesville, Marietta line.

[2] From territory west of the Sandusky, Mansfield, Zanesville, Marietta line.

The differentials were the result of an agreement entered into by North Atlantic port railroads in 1877. At that time ocean rates to Philadelphia and Baltimore were higher than to the northern tier ports and the object of the agree-[fol. 5273] ment was "to avoid misunderstanding as to the geographical advantages or disadvantages of New York, Philadelphia, and Baltimore as affected by railroad-ocean transportation, and to effect an equalization of rail-ocean transportation cost between interior points and foreign ports reached through these cities." Boston rates, under this agreement, were to be no less than those to and from New York.

Beginning in the early 1920's and extending to about 1935, ocean rates to and from the different ports gradually were equalized and the total transportation charge through the northern tier ports consequently became higher than the combined cost of rail and ocean transportation through a southern tier port. It is this competitive disadvantage which the plaintiff railroads sought to remove with their proposed rate schedule.

By schedules filed to become effective simultaneously with those of plaintiffs, certain railroads which serve the southern tier ports and, in some instances, also New York, proposed to reduce their rates by the same amounts. This counterproposal, which was to take effect only if the plaintiffs' schedules were allowed, would restore the differential at a lower level.

Upon protests of each group to the other proposal, the I.C.C. suspended both schedules and instituted an investigation into their lawfulness. After hearing and review by the Commission, it issued the order from which this appeal was taken, denying the fourth-section application and cancelling the plaintiffs' proposed schedule on the findings that the "proposed rates are not shown to be reasonably related to the present rates on like traffic between the same interior points and the southern tier ports"; that they "would result in undue preference of and advantage to the northern tier ports as a group and in undue prejudice and disadvantage to the southern tier ports," and that they "are not shown to be just and reasonable." Equalization of Rates, *supra*, at 741, 742.

[fol. 5274] In its answer to the complaint in this action the United States admitted that the Commission's order was erroneous in that it treated the proposal vis-a-vis the northern tier ports as a group and failed to consider the lawfulness of the proposed rates as to each port separately. As a result, the Commission reopened the proceedings "for reconsideration on the present record of the lawfulness of the proposed rates separately and independently on traffic to and from each northern tier port." The proceedings in this court were held in abeyance pending this decision.

On reconsideration the Commission affirmed its original holding and also found that the greater distance of the northern tier ports from affected territory over Baltimore and Philadelphia "may not be ignored without running counter to the provisions of section 3(1) of the Act," p. 21, Recon.[1] Moreover, it found "so far as New York is concerned, rate equalization is not required to enable that port to meet the competition of the southern tier ports, and that, so far as Boston, Portland, and Albany are concerned, such equalization would not materially affect the flow of foreign traffic through any of these ports," p. 21, Recon.

The Commission's decision is attacked here generally as being erroneous in law, unsupported by essential basic findings and unsupported by substantial evidence on the record as a whole.

The specific object of attack by the plaintiffs in this proceeding is the Commission's conclusion of a section 3(1) violation, and the weight the Commission attached to the sole subsidiary finding upon which this conclusion is based —that the northern tier ports have a distance disadvantage over Baltimore of from 223 miles in the case of Boston to 117 miles in the case of New York.

[fol. 5275] It is admitted by the plaintiffs that the function of a court reviewing an administrative decision is a limited one. The general rule is that "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body,"

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[1] Page references so designated are to the mimeographed copy of the Report of the Commission on Reconsideration.

Mississippi Valley Barge Line Co. v. *United States*, 292 U.S. 282, 286-7 (1934), and specifically "the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power or (3) based upon a mistake in law." *I.C.C.* v. *Union Pacific R.R.*, 222 U.S. 541, 547 (1911). Further, an order cannot be sustained unless supported by essential basic facts particularly stated. *Atchison, T. & S. F. Ry.* v. *United States*, 295 U.S. 193 (1935); *United States* v. *Chicago, M., St. P. & P. R.R.*, 294 U.S. 499 (1935).

Under 49 U.S.C. § 15(7), the plaintiffs had the burden of proof to show that the proposed rates are "just and reasonable" within the meaning of section 1(5), free from unjust discrimination prohibited by section 2 and that they contain no undue preference or prejudice proscribed by section 3(1).

The evidence before the Commission showed and the Commission found that the four northern tier ports experienced a relative decline in the participation of total United States foreign tonnage in the period 1923-55, while the relative share of the southern tier ports increased markedly during the same period. Thus, even while the foreign traffic through New York during this period rose from 22.6 million gross tons to 36.2 million gross tons, its share of the total United States tonnage declined from 28.6 per cent to 14 per cent. Boston's participation dropped similarly from 4.7 per cent to 2.5 per cent. On the other hand the share of the southern tier ports of total United States imports and exports increased as follows: Philadelphia from 7.9 to 15.7 per cent, Baltimore from 8.4 to 10.4 per cent and Hampton Roads from 4.3 to 17.1 per cent. [fol. 5276] Since these figures are not limited to affected territory traffic, nor even to rail tonnage, they are by no means conclusive proof of the plaintiffs' position; but they do serve as an indication of the trend in import-export traffic movement. In order to present a clearer and more complete picture of comparative traffic between all North Atlantic ports and affected territory the railroads conducted traffic studies during 1955-56 which showed that 75.8 per cent of imports and 63.7 per cent of exports (measured by carloads) moved through the southern tier ports. Similar,

but incomplete studies for the years 1946 and 1947 tentatively indicate that a downward trend of import-export traffic to affected territory on the lines serving New York exists.

The Commission points out that New York still clearly dominates general cargo traffic and that the preponderance of southern tier traffic consists of bulk cargo[1] which prefers these ports because of their modern, specialized facilities and services. It is also apparent, however, that bulk cargo is necessarily more sensitive to rate differentials and the Commission implicitly so acknowledges by noting that the equalization of ex-lake rates on grain from Buffalo has resulted in a shift of the relative shares of that traffic in favor of the northern tier ports. Moreover, New York's dominance in general cargo traffic is not sufficient reason for denying it and the railroads serving it the opportunity to compete for bulk cargo traffic, as "both types of cargo are considered essential to a healthy port economy." Equali- [fol. 5277] zation of Rates, *supra*, at 791.

There was, furthermore, extensive evidence from shippers, both private and representatives of various agencies of the United States, that the differential adjustment is a controlling consideration in their choice of ports. These witnesses supported equalization and testified to the need to provide relief from congested ports, bunching and inefficient utilization of cars and delays in the flow of traffic.

In addition to this evidence indicating the importance of the differential and showing the necessity for its removal, the plaintiffs presented proof that the proposed rates are just and reasonable. In view of the minimal amounts of the proposed reductions (reduction in revenue from Chicago to Boston would be .08 cents per ton-mile on first-

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[1] "Ocean borne commerce is classified into two types of cargo. By far the largest in volume is bulk cargo. It consists generally of low-value heavy volume raw materials which are handled at the port by mechanical facilities and provide bottom loading for ships or may move as full cargoes. The other type, called general cargo, includes principally manufactured and semimanufactured goods of relatively high value, which are usually packaged. General cargo generally constitutes the more profitable 'top loading' for ships in a balanced cargo operation." Equalization of Rates, *supra*, at 700.

class traffic and .10 cents on Column 13 traffic, for example), the plaintiffs relied on a prima facie showing of revenues. There was testimony that, using representative origins and destinations and the proposed rates, for 96.8 per cent of all tonnage moving through the port of New York, the import traffic averaged a rate per ton of $19.20 and revenues per ton-mile of 2.47 cents, and that for export traffic these figures were $18.00 and 2.32 cents. In comparison the average revenue per ton-mile for Class I railroads in the United States is 1.384 cents.

The defendant railroads countered this evidence by showing that with respect to traffic through the port of New York the proposed rates were insufficient to return out-of-pocket costs. But, while it refused to find the rates compensatory, the Commission did find after restating and adjusting the cost evidence, that "the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs." Equalization of Rates, *supra,* at 735.

On this evidence the plaintiffs certainly established prima [fol. 5278] facie that the proposed rate schedule is just and reasonable. We now turn to the Commission's disposition of the case. As noted above, it disallowed the proposal principally on the ground that the rates would violate section 3(1). This section provides that

> "It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway . . . or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway . . . or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . ."

In one of the earliest cases to come before the Supreme Court under this Act, the Court said that when presented with a question of unjust discrimination, the Commission

is to "take into consideration all the facts of the given case —among which are to be considered the welfare and advantage of the common carrier, and of the great body of the citizens of the United States. . . . The Commission is not only to consider the wishes and interests of the shippers and merchants of large cities, but to consider also the desire and advantage of the carriers in securing special forms of traffic, and the interest of the public that the carriers should secure that traffic, rather than abandon it, or not attempt to secure it." *Texas & Pac. Ry.* v. *I.C.C.*, 162 U.S. 197, 218 (1896). In 1940, Congress, by adding the National Transportation Policy, 49 U.S.C., affirmed and reiterated the view that the Act must be interpreted as a whole and the competing interests of shippers, carriers, and localities carefully balanced "to the end of developing a national transportation system. . . ."

While apparently recognizing these principles, the Commission, in this case, nonetheless wholly ignored them. It noted the voluminous testimony of shippers and receivers in favor of equalization, but in its conclusions completely disregarded this evidence. It considered the need of the plaintiffs and their competitive disadvantage, but dis- [fol. 5279] counted both in its findings. Its final decision rests solely on the proposition that some ports would be unduly preferred and others unduly prejudiced by the proposed rates.

In emphasizing the welfare of ports and port districts, the Commission apparently relied on the 1935 amendment to section 3(1) which added "ports, port districts, gateways and transit points," to the interests protected by that section.

In *Texas & Pac. Ry.* v. *United States*, 289 U.S. 627 (1933), the Supreme Court had held that the word "locality" referred to "points of origin or destination" and did not include gateways. The purpose of the amendment was only to restore to the Commission a power which it had previously exercised, but which the Supreme Court had held the Commission did not have. Neither the legislative history nor the plain words of the amendment indicate that any change in the prevailing rules respecting undue preference

and prejudice or any special treatment of ports and port districts was intended.

We find that the Commission erred in applying section 3(1) too narrowly and in not giving due weight to the interests of shippers, receivers, carriers, and inland localities.

The Commission in reaching the conclusion that the proposed rates violate section 3(1) relies on a single subsidiary finding—the distance disadvantage of the northern tier ports. In the light of the history of the differential, earlier decisions of the Commission concerning it, the original report issued in this case, and the facts of this case, this finding in the Report on Reconsideration and its import are somewhat difficult to understand and, in view of the applicable law, erroneous. In the first place, the differential was established to place all North Atlantic ports on a parity with respect to the aggregate of rail and ocean charges. No consideration whatever was given to disparity in rail distances then or later. On the contrary, when the Thurman-Cooley-Washburn Advisory Commission con- [fol. 5280] cluded in 1882 that the differentials should remain, it specifically rejected the "distance principle" as controlling port relationships and rested its award on the principle of "competitive opportunity."

Until it filed its Report on Reconsideration in this proceeding, the Commission, itself, has continually adhered to the proposition that distance plays no part in the determination of port differentials. It so stated even in its original report: "Such distance disadvantages as they (the northern tier ports) have are much less than the substantial differences to and from some other ports which have a parity or near parity of rates, including the Canadian ports, and the wide differences which obtain where the several South Atlantic and Gulf ports are equalized. . . . It is apparent that considerable disregard of rail distances is characteristic of all port adjustments, as it was in the establishment of the rates here dealt with." Equalization of Rates, *supra*, at 715, 716.

Even while proclaiming this new rule, the Commission ignores it. Import rates from Portland may remain on a parity with Baltimore in spite of a distance disadvantage

of more than 800 miles. Moreover, the present differentials do not in any way reflect the distance differences.

Secondly, one of the purposes of the 1935 amendment to section 3 was, as the Commission had previously pointed out, Equalization of Rates, *supra*, at 716 and cites therein, to permit all ports and the carriers serving them to compete for all import and export traffic and thereby maximizing the number of ports available. The finding in this case, if pressed to its logical conclusion, would result in traffic flowing only through the most distance favored port. On the other hand, if applied only in this case, the decision is arbitrary and capricious.

Thirdly, the Commission has failed to distinguish between rates which carriers may voluntarily publish to meet [fol. 5281] competition pursuant to section 15(7) and rates which carriers, on complaint under section 3(1) may be required to change. It is now well established that carriers may, within the zone of reasonableness, adjust rates to meet competition—*United States* v. *Chicago, M., St. P. & P. R.R.*, 294 U.S. 499, 506 (1935); *Texas & Pac. Ry.* v. *United States*, 289 U.S. 627, 636 (1933); *New York Cent. R.R.* v. *United States*, 99 F. Supp. 394 (D.C. Mass. 1951)—in which case the issue to be decided is whether the *proposed* rates are lawful. In a complaint proceeding the question is whether the *existing* rates are lawful and, if not, whether they should be required to be changed. However, both the Report and the Report on Reconsideration give continuous indication that the Commission regarded this as a "port" case, not a "railroad" case. For example, the observation that "in the rare instances where rate changes in port relationships have been required by us, distance has been an important consideration," p. 21, Recon., while perhaps true, was totally irrelevant to the issues before it. Distance differences might be relevant insofar as they reflect differences in the cost and value of the services of plaintiff and defendant railroads, see *United States* v. *Illinois Cent. R.R.*, 263 U.S. 515, 524 (1924), but the Commission made no such cost or value findings nor does the record contain evidence from which it could make such findings. We must, therefore, rule that its conclusion lacks the required basic findings to support it.

The Commission disapproved the plaintiffs' proposal on the additional ground that, insofar as New York is concerned, equalization is not necessary to enable that port to compete. This conclusion again is based on a misunderstanding of the nature of the proceedings. While the New York Port Authority and other New York governmental and commercial interests were undoubtedly active participants in the case, the primary issue is whether equalization is necessary to enable the plaintiff railroads to compete. And the evidence showed that the share of traffic handled by these railroads has been declining.

[fol. 5282] The last reason given in support of its decision is that with respect to the ports of Boston, Albany and Portland, "equalization would not materially affect the flow of traffic to these ports." Not only does this statement completely contradict the Commission's ultimate conclusion of undue prejudice to the southern tier ports, but it ignores the plaintiffs' right to attempt to gain some of this traffic for their lines.

We, therefore, conclude that the Commission's decision is erroneous in law and lacks the rational basis necessary to uphold it and it must be set aside. A judgment may be entered setting aside the order of the I.C.C. and issuing a permanent injunction as prayed for.

Peter Woodbury, Chief Judge, United States Court of Appeals; George C. Sweeney, Chief Judge, United States District Court; Francis J. W. Ford, United States District Judge.

[fol. 5283] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

Before Woodbury, Chief Judge, United States Court of Appeals, Sweeney, Chief Judge, United States District Court, and Ford, United States District Judge.

JUDGMENT—Entered February 23, 1962

In accordance with the opinion of the Court handed down on February 16, 1962, it is hereby Ordered

The order of the Interstate Commerce Commission of December 5, 1960, insofar as it directs the cancellation of schedules proposing differential-eliminating rates to and from the Ports of Portland, Maine, Boston, Massachusetts, Albany and New York, New York, denies fourth-section application No. 32204, and prevents differential-eliminating rates from becoming effective, is set aside and the operation, enforcement and execution thereof is permanently enjoined.

By the Court,

Helen I. Tweedy, Deputy Clerk.

Approved: Peter Woodbury, George C. Sweeney, Francis J. W. Ford.

[fol. 5284]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

NOTICE OF APPEAL OF THE MARYLAND PORT AUTHORITY ET AL. TO THE SUPREME COURT OF THE UNITED STATES—Filed March 30, 1962

I

Notice is hereby given that the Maryland Port Authority, Baltimore Association of Commerce, Delaware River Port Authority, The City of Philadelphia, Virginia State Ports Authority and Norfolk Port and Industrial Authority, intervening defendants in the above-entitled case, hereby appeal to the Supreme Court of the United States from the final judgment entered in this action on February 23, 1962, setting aside and enjoining enforcement of the order of December 5, 1960, of the Interstate Commerce Commission in Investigation and Suspension Docket No. 6615, *Equalization of Rates at North Atlantic Ports.*

This appeal is taken pursuant to 28 U.S.C. Sections 1253 and 2101(b).

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme [fol. 5285] Court of the United States, and include in said transcript the following:

(1) Complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(2) Orders (Woodbury, C.J.,) designating a three-judge District Court, filed January 18 and January 25, 1961.

(3) Motion of the Massachusetts Port Authority for leave to intervene as plaintiffs, and order of the Court permitting same.

(4) Motion of the Delaware and Hudson Railroad Corporation and other railroads for leave to intervene as plaintiffs, and order of the Court permitting same.

(5) Motion of the Port of New York Authority, the State of New York, and the City of New York, for leave to intervene as plaintiffs, and order of the court permitting same.

(6) Complaint of intervening plaintiff, Massachusetts Port Authority.

(7) Complaint of the several railroad intervening plaintiffs.

(8) Complaint of intervening plaintiffs, the Port of New York Authority, the State of New York and the City of New York.

(9) Motion and pleading of the Baltimore and Ohio Railroad and other railroads for leave to intervene as defendants, and order of the Court permitting same.

(10) Motion and pleading of the Maryland Port Authority and Baltimore Association of Commerce for leave to intervene as defendants, and order of the Court permitting same.

[fol. 5286] (11) Motion and pleading of the Virginia State Ports Authority and the Norfolk Port and Industrial Authority for leave to intervene as defendants, and order of the Court permitting same.

(12) Motion and pleading of the Delaware River Port Authority for leave to intervene as defendant, and order of the Court permitting same.

(13) Motion and pleading of the City of Philadelphia for leave to intervene as defendant, and order of the Court permitting same.

(14) Answer of railroad intervening defendants to complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(15) Answer of railroad intervening defendants to the complaint of intervening plaintiff, Massachusetts Port Authority.

(16) Answer of railroad intervening defendants to the complaint of the several railroad intervening plaintiffs.

(17) Answer of railroad intervening defendants to the complaint of intervening plaintiffs, the Port of New York Authority, the State of New York and the City of New York.

(18) Answer of the Interstate Commerce Commission to the complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(19) Answer of the Interstate Commerce Commission to the complaint of the Massachusetts Port Authority, intervening plaintiff.

(20) Answer of the Interstate Commerce Commission to the complaint of the several railroad intervening plaintiffs.

[fol. 5287] (21) Answer of the Interstate Commerce Commission to the complaint of the Port of New York Authority, the State of New York and the City of New York, intervening plaintiffs.

(22) Answer of the Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(23) Answer of the Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the complaint of intervening plaintiff, Massachusetts Port Authority.

(24) Answer of the Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the complaint of the several railroad intervening plaintiffs.

(25) Answer of the Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, and the City of New York.

(26) Answer of intervening defendants, Virginia State Ports Authority and Norfolk Port and Industrial Authority, to the complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(27) Answer of intervening defendants, Virginia State Ports Authority and Norfolk Port and Industrial Authority, to the complaint of intervening plaintiff, Massachusetts Port Authority.

(28) Answer of intervening defendants, Virginia State Ports Authority and Norfolk Port and Industrial Authority, to the complaint of the several railroad intervening plaintiffs.

(29) Answer of intervening defendants, Virginia State Ports Authority and Norfolk Port and Industrial Authority, [fol. 5288] to the complaint of intervening plaintiffs, the Port of New York Authority, The State of New York, and the City of New York.

(30) Answer of intervening defendant, Delaware River Port Authority, to the complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(31) Answer of intervening defendant, Delaware River Port Authority, to the complaint of intervening plaintiff, Massachusetts Port Authority.

(32) Answer of intervening defendant, Delaware River Port Authority, to the complaint of the several railroad intervening plaintiffs.

(33) Answer of intervening defendant, Delaware River Port Authority, to the complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, and the City of New York.

(34) Motion and pleading of the Maine Central Railroad Company for leave to intervene as a defendant, and order of the Court permitting same.

(35) Answer of the Maine Central Railroad Company, intervening defendant, to the complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(36) Answer of the Maine Central Railroad Company, intervening defendant, to the complaint of intervening plaintiff, Massachusetts Port Authority.

(37) Answer of the Maine Central Railroad Company, intervening defendant, to the complaint of the several railroad intervening plaintiffs.

[fol. 5289] (38) Answer of the Maine Central Railroad Company, intervening defendant, to the complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, and the City of New York.

(39) Answer of the City of Philadelphia, intervening defendant, to the complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(40) Answer of the City of Philadelphia, intervening defendant, to the complaint of intervening plaintiff, Massachusetts Port Authority.

(41) Answer of the City of Philadelphia, intervening defendant, to the complaint of the several railroad intervening plaintiffs.

(42) Answer of the City of Philadelphia, intervening defendant, to the complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, and the City of New York.

(43) Answer of the United States of America to the complaint of the plaintiffs and to the complaints of the intervening plaintiffs.

(44) Motion of Chamber of Commerce of the State of New York, et al., for leave to intervene as plaintiffs, and order of the Court permitting same.

(45) Complaint of the Chamber of Commerce of the State of New York, et al., intervening plaintiffs.

[fol. 5290] (46) Answer of the Interstate Commerce Commission to the complaint of the Chamber of Commerce of the State of New York, et al., intervening plaintiffs.

(47) Amended complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(48) Motion of Massachusetts Port Authority, plaintiff-intervenor, for leave to file amended complaint.

(49) Amended complaint of Massachusetts Port Authority, plaintiff-intervenor.

(50) Amended complaint of the several railroad intervening plaintiffs.

(51) Amended complaint of the Port of New York Authority, the State of New York, the City of New York, et al., intervening plaintiffs.

(52) Answer of the Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the amended complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(53) Answer of the Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the amended complaint of intervening plaintiff, Massachusetts Port Authority.

(54) Answer of Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the amended complaint of the several railroad-intervening plaintiffs.

(55) Answer of the Maryland Port Authority and Baltimore Association of Commerce, intervening defendants, to the amended complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, the City of New York, et al.

[fol. 5291] (56) Answer of the Maine Central Railroad Company, intervening defendant, to the amended complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(57) Answer of the Maine Central Railroad Company, intervening defendant, to the amended complaint of intervening plaintiff, Massachusetts Port Authority.

(58) Answer of Maine Central Railroad Company, intervening defendant, to the amended complaint of the several railroad intervening plaintiffs.

(59) Answer of the Maine Central Railroad Company, intervening defendant, to the amended complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, the City of New York, et al.

(60) Answer of the Interstate Commerce Commission to the amended complaint of the plaintiffs, Boston and Maine Railroad, and the New York, New Haven and Hartford Railroad Company.

(61) Answer of the Interstate Commerce Commission to the amended complaint of the Massachusetts Port Authority, intervening plaintiff.

(62) Answer of the Interstate Commerce Commission to the amended complaint of intervening railroad plaintiffs.

(63) Answer of the Interstate Commerce Commission to the amended complaint of the Port of New York Authority, the State of New York, the City of New York, et al., intervening plaintiffs.

[fol. 5292] (64) Answer of the railroad intervening defendants to the amended complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(65) Answer of the railroad intervening defendants to the amended complaint of intervening plaintiff, Massachusetts Port Authority.

(66) Answer of the railroad intervening defendants to the amended complaint of the several railroad intervening plaintiffs.

(67) Answer of the railroad intervening defendants to the amended complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, the City of New York, et al.

(68) Answer of the City of Philadelphia, intervening defendant, to the amended complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(69) Answer of the City of Philadelphia, intervening defendant, to the amended complaint of intervening plaintiff, Massachusetts Port Authority.

(70) Answer of the City of Philadelphia, intervening defendant, to the amended complaint of the several railroad intervening plaintiffs.

(71) Answer of the City of Philadelphia, intervening defendant, to the amended complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, the City of New York, et al.

[fol. 5293] (72) Answer of Virginia State Ports Authority and Norfolk Port and Industrial Authority, intervening defendants, to the amended complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(73) Answer of Virginia State Ports Authority and Norfolk Port and Industrial Authority, intervening defendants, to the amended complaint of intervening plaintiff, Massachusetts Port Authority.

(74) Answer of Virginia State Ports Authority and Norfolk Port and Industrial Authority, intervening defendants, to the amended complaint of the several railroad intervening plaintiffs.

(75) Answer of Virginia State Ports Authority and Norfolk Port and Industrial Authority, intervening defendants, to the amended complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, the City of New York, et al.

(76) Answer of intervening defendant, Delaware River Port Authority, to the amended complaint of the plaintiffs, Boston and Maine Railroad and the New York, New Haven and Hartford Railroad Company.

(77) Answer of intervening defendant, Delaware River Port Authority, to the amended complaint of intervening plaintiff, Massachusetts Port Authority.

(78) Answer of intervening defendant, Delaware River Port Authority, to the amended complaint of the several railroad intervening plaintiffs.

(79) Answer of the intervening defendant, Delaware River Port Authority, to the amended complaint of intervening plaintiffs, the Port of New York Authority, the State of New York, the City of New York, et al.

[fol. 5294] (80) Answer of the defendant, the United States of America, to the amended complaints of the plaintiffs and the intervening plaintiffs.

(81) Opinion of the Court filed February 16, 1962.

(82) Judgment of the Court entered February 23, 1962.

(83) Motion of Maryland Port Authority, et al., intervening defendants, for stay of judgment.

(84) Motion of the City of Philadelphia, intervening defendant, for stay of judgment.

(85) Motion of Interstate Commerce Commission for stay of judgment.

(86) Motion of Delaware River Port Authority, intervening defendant, for stay of judgment.

(87) Motion of Virginia State Ports Authority and Norfolk Port and Industrial Authority, intervening defendants, for stay of judgment.

(88) Order of the Court granting the motion for a stay of judgment.

(89) This notice of appeal.

(90) The entire certified transcript of proceedings befor the Commission in its Investigation and Suspension Docket No. 6615, *Equalization of Rates At All North Atlantic Ports,* together with all exhibits, reports and orders therein, which were introduced and admitted in evidence in the trial of this cause.

(91) Clerk's docket entries.

[fol. 5295]

III

The following questions are presented by this appeal:

1. Did the District Court err in setting aside and enjoining the order of the Commission on the ground that the Commission's ultimate finding that the proposed rates would result in undue prejudice and disadvantage to the southern tier ports was erroneous in law and without rational basis?

2. Did the District Court err in setting aside and enjoining the order of the Commission on the ground that the Commission, in finding that the proposed rates would violate Interstate Commerce Act, 49 U.S.C. § 3(1), had given undue weight to the injury to the southern tier ports and insufficient weight to the interests of shippers, receivers, carriers and inland localities in view of the Court's recognition of the fact that the Commission took cognizance of these interests and undertook to balance them?

3. Did the District Court err in holding that the Commission, "in reaching the conclusion that the proposed rates violate Section 3(1) relies on a single subsidiary finding—the distance disadvantage of the northern tier ports"?

4. Did the District Court err in holding that the Commission was not entitled on this record to give any weight to the distance disadvantages of the northern tier ports in determining whether the proposed rates were lawful?

5. Did the District Court err in holding that the Commission made no cost findings, and that the record does not contain evidence from which it could make such findings, when the Commission specifically found that the greater distance of the northern tier ports from the affected [fol. 5296] territory and the higher costs of service to and from these ports are firmly established, and in view of the Commission's detailed consideration of voluminous cost evidence?

6. Did the District Court err in holding that the Commission had no power to reject rates proposed by carriers on the ground that they would result in undue prejudice in violation of Section 3(1)?

7. Did the District Court err in holding that the proposed rates of the appellee railroads have been shown to be just and reasonable, and that the Commission lacks the power to require that the schedules publishing said rates be cancelled, where carriers serving the northern tier ports filed schedules of reduced rates for the purpose of abolishing a long existing differential in favor of the southern tier ports, and the carriers serving the southern tier ports filed a matching reduction, both sides admitting that the issue was solely one of relationship, and where the Commission found, after careful consideration of the evidence, that, in view of the competitive factors, and the greater distance of the northern tier ports from the affected territory, and the firmly established higher cost of service to and from those ports, approval of the reductions proposed by appellee railroads would require approval of the matching reductions published by the railroads serving the southern tier ports?

8. Did the District Court err in finding that the proposed rates had been shown by the appellee railroads to be lawful when there was a finding by the Commission, based on a careful analysis of conflicting testimony, that appellees had not met the burden of proving the proposed rates to be compensatory?

[fol. 5297] 9. Did the District Court err in holding that the Commission, in determining whether the appellee rail-

roads had met the burden of establishing that the proposed rates were just and reasonable, should have regarded as dispositive the fact that the proposed rates represented minimal reductions, "would equal or exceed by a very small margin the estimated out-of-pocket costs" on existing traffic, and would yield ton-mile revenues in excess of average ton-mile revenues of Class I railroads in the United States?

10. Did the District Court err in substituting its judgment for that of the Commission in the evaluation of the evidence presented before the Commission, and in substituting its theory of rate-making for the judgment of the Commission on matters delegated to the Commission's jurisdiction by Congress?

Dated this 30th day of March, 1962.

Respectfully submitted,

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[fol. 5298]

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[fol. 5299]

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Attorneys for Delaware River Port Authority.

[fol. 5300] Proof of Service (omitted in printing).

[fol. 5304]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

NOTICE OF APPEAL OF THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL. TO THE SUPREME COURT OF THE UNITED STATES—Filed March 30, 1962

I

Notice is hereby given that The Baltimore and Ohio Railroad Company, Canton Railroad Company, The Chesapeake and Ohio Railway Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, Reading Company, and Western Maryland Railway Company, intervening defendants in the above-entitled case, hereby appeal to the Supreme Court of the United States from the final judgment entered in this action on February 23, 1962, setting aside and enjoining enforcement of the order of December 5, 1960, of the Interstate Commerce Commission in Investigation and Suspension Docket No. 6615, *Equalization of Rates at North Atlantic Ports.*

This appeal is taken pursuant to 28 U.S.C. Sections 1253 and 2101(b).

II

The appellants, Maryland Port Authority, Baltimore Association of Commerce, Delaware River Port Authority, The City of Philadelphia, Virginia State Ports Authority and Norfolk Port and Industrial Authority, in their Notice [fol. 5305] of Appeal having requested the Clerk of this

Court to prepare a transcript of the entire record in this cause for transmission to the Supreme Court of the United States, the only additional paper or document the Clerk is now requested to transcribe and forward to the Supreme Court is this Notice of Appeal.

III

The following questions are presented by this appeal:

1. Did the District Court err in setting aside and enjoining the order of the Commission on the ground that the Commission's ultimate finding that the proposed rates would result in undue prejudice and disadvantage to the southern tier ports was erroneous in law and without rational basis?

2. Did the District Court err in setting aside and enjoining the order of the Commission on the ground that the Commission, in finding that the proposed rates would violate Interstate Commerce Act, 49 U.S.C. §3(1), had given undue weight to the injury to the southern tier ports and insufficient weight to the interests of shippers, receivers, carriers and inland localities in view of the Court's recognition of the fact that the Commission took cognizance of these interests and undertook to balance them?

3. Did the District Court err in holding that the Commission, "in reaching the conclusion that the proposed rates violate Section 3(1) relies on a single subsidiary finding—the distance disadvantage of the northern tier ports"?

4. Did the District Court err in holding that the Commission was not entitled on this record to give any weight to the distance disadvantage of the northern tier ports in determining whether the proposed rates were lawful?

5. Did the District Court err in holding that the Commission made no cost findings, and that the record does not contain evidence from which it could make such findings, when the Commission specifically found that the greater [fol. 5306] distance of the northern tier ports from the affected territory and the higher costs of service to and from these ports are firmly established, and in view of the

Commission's detailed consideration of voluminous cost evidence?

6. Did the District Court err in holding that the Commission had no power to reject rates proposed by carriers on the ground that they would result in undue prejudice in violation of Section 3(1)?

7. Did the District Court err in holding that the proposed rates of the appellee railroads have been shown to be just and reasonable, and that the Commission lacks the power to require that the schedules publishing said rates be cancelled, where carriers serving the northern tier ports filed schedules of reduced rates for the purpose of abolishing a long existing differential in favor of the southern tier ports, and the carriers serving the southern tier ports filed a matching reduction, both sides admitting that the issue was solely one of relationship, and where the Commission found, after careful consideration of the evidence, that, in view of the competitive factors, and the greater distance of the northern tier ports from the affected territory, and the firmly established higher cost of service to and from those ports, approval of the reductions proposed by appellee railroads would require approval of the matching reductions published by the railroads serving the southern tier ports.

8. Did the District Court err in finding that the proposed rates had been shown by the appellee railroads to be lawful when there was a finding by the Commission, based on a careful analysis of conflicting testimony, that appellees had not met the burden of proving the proposed rates to be compensatory?

9. Did the District Court err in holding that the Commission, in determining whether the appellee railroads had met the burden of establishing that the proposed rates were just and reasonable, should have regarded as dispositive [fol. 5307] the fact that the proposed rates represented minimal reductions, "would equal or exceed by a very small margin the estimated out-of-pocket costs" on existing traffic, and would yield ton-mile revenues in excess of average ton-mile revenues of Class I railroads in the United States?

10. Did the District Court err in substituting its judgment for that of the Commission in the evaluation of the evidence presented before the Commission, and in substituting its theory of rate-making for the judgment of the Commission on matters delegated to the Commission's jurisdiction by Congress?

Dated this 30th day of March, 1962.

Respectfully submitted,

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[fol. 5308]

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Attorneys for Defendant-Intervening Rairoads.

[fol. 5309] Proof of Service (omitted in printing).

[fol. 5313]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 61-38-S

BOSTON AND MAINE RAILROAD, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

NOTICE OF APPEAL OF INTERSTATE COMMERCE COMMISSION TO THE SUPREME COURT OF THE UNITED STATES—Filed March 30, 1962

I.

Notice is hereby given that the Interstate Commerce Commission, one of the defendants in the above-entitled civil action, appeals to the Supreme Court of the United States from the final judgment entered in this action on February 23, 1962.

II.

The appellants Maryland Port Authority, et al., and Baltimore and Ohio Railroad Company, et al., in their notices of appeal having requested the Clerk of this Court to prepare a transcript of the entire record in this cause for transmission to the Supreme Court of the United States, the only additional paper or document the Clerk is now requested to transcribe and forward to the Supreme Court is this Notice of Appeal.

III.

The following questions are presented by this appeal:

1. Whether the District Court erred in reversing the order of the Interstate Commerce Commission on the

ground that the Commission's finding that the proposed [fol. 5314] reduced rates to the northern tier ports (New York, Albany, Boston and Portland) would result in undue preference of and advantage to the northern tier ports and in undue prejudice and disadvantage to the southern tier ports (Baltimore, Philadelphia and Hampton Roads) in violation of Section 3(1) of the Interstate Commerce Act, was without rational basis?

2. Whether the District Court erred in rejecting the Commission's conclusion that the proposed rates, which would establish rate parity on export and import traffic moving between a defined territory and the northern and southern tier ports, would be unduly prejudicial to the southern tier ports, in view of the Commission's findings that (1) the railroads serving the southern tier ports enjoy advantages of distance and cost, (2) that under parity rates these railroads could not compete with the railroads serving the northern tier ports, and (3) that under parity rates there would be an undue diversion of traffic from the southern tier ports to New York?

3. Whether the District Court erred in reversing the Commission's order on the ground that in finding a violation of Section 3(1) the Commission failed to give sufficient weight to the interests of shippers, receivers, carriers, and inland communities, and gave undue weight to the distance disadvantage of the northern tier ports and to the effect of the proposed rates upon the competitive position of the various ports?

4. Whether the District Court erred in holding that the distance disadvantages of the railroads serving the northern tier ports were irrelevant in determining the lawfulness of the proposed rates?

5. Whether the District Court erred in holding that the Commission's conclusion that the proposed rates would vio- [fol. 5315] late Section 3(1) was based solely upon the distance disadvantage of the railroads serving the northern tier ports?

6. Whether the District Court erred in holding that the Commission had failed to find that the distance disadvantages of the railroads serving the northern tier ports reflect cost disadvantages?

7. Whether the District Court erred in holding that railroads serving ports must be permitted to compete for import and export traffic without regard to Section 3(1) and other standards for determining the lawfulness of rates?

8. Whether the District Court erred in holding that the Commission could determine whether rates producing parity between the northern and southern tier ports violate Section 3(1) only in a complaint proceeding after such rates have been in effect?

9. Whether the District Court erred in finding that the railroads serving the northern tier ports had met their statutory burden of proving the proposed rates to be just and reasonable?

10. Whether the District Court erred in rejecting or ignoring the Commission's conclusion that approval of the proposed rates notwithstanding the distance and cost disadvantages of the railroads serving the northern tier ports, would require approval of rate reductions by the railroads serving the southern tier ports thereby producing destructive competition and needless dissipation of carrier revenues?

11. Whether the District Court erred in rejecting the Commission's conclusion that the proposed rates were not shown to be reasonably related to the present rates on like [fol. 5316] traffic between the same interior points and the southern tier ports?

Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorney for the Interstate Commerce Commission.

Proof of Service (omitted in printing).

[fol. 5320]

SUPREME COURT OF THE UNITED STATES

Nos. 923, 924, and 925, October Term, 1961

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., Appellants,

vs.

BOSTON AND MAINE RAILROAD, ET AL.;

MARYLAND PORT AUTHORITY, ET AL., Appellants,

vs.

BOSTON AND MAINE RAILROAD, ET AL.; and

INTERSTATE COMMERCE COMMISSION, Appellant,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

Appeals from the United States District Court for the District of Massachusetts.

ORDER NOTING PROBABLE JURISDICTION—June 11, 1962

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allowed for oral argument.

Mr. Justice Frankfurter and Mr. Justice White took no part in the consideration or decision of these cases.